United States Court of Appeals

for the Second Circuit

APPENDIX

74-2079

B

P&S

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 74-2079

M. SPIEGEL & SONS OIL CORP.,

Plaintiff-Appellee,

-against-

B. P. OIL CORP., Defendant-Appellant, and
STANDARD OIL COMPANY (SOHIO),

Defendant.

On Appeal from the United States District
Court for the Eastern District of New York

JOINT APPENDIX

DEBEVOISE, PLIMPTON, LYONS & GATES
Attorneys for Defendant-Appellant
BP Oil Inc.
299 Park Avenue
New York, New York 10017
752-6400

OCT 18 1974
SECOND CIRCUIT

COLE & DIETZ
Attorneys for Plaintiff-Appellee
M. Spiegel & Sons Oil Corp.
40 Wall Street
New York, New York 10005

New York, New York
October 18, 1974

5

PAGINATION AS IN ORIGINAL COPY

INDEX TO JOINT APPENDIX

	Page
Docket Entries	A1
Verified Complaint, dated June 19, 1974	A4
Order to Show Cause, dated June 20, 1974	A38
Affidavit of Lawrence Richard Spiegel, sworn to June 19, 1974	A40
Exhibit A (Agreement between Sinclair and Blue Bird, dated September 29, 1953)	A55
Exhibit D (Agreement between BP and Spiegel, dated May 24, 1970)	A60
Exhibit E (Analysis of Operating Performance of Metro New York Distributors, dated November 1969)	A61
Exhibit F (Letter from R. G. Griffin to Murray Spiegel, dated November 10, 1970)	A85
Exhibit G (Mortgage Note from Spiegel to BP dated October 31, 1969)	A86
Exhibit I (Letter from L. G. Johnson to Spiegel, dated June 9, 1972)	A89
Exhibit J (Settlement Contract between BP and Spiegel, dated July 11, 1973)	A90
Exhibit L (Newspaper Article, undated)	A93
Exhibit M (Partial Transcript of Hearing Before North Hempstead Zoning Board, held May 29, 1974)	A94
Exhibit N (Federal Energy Office Order)	A99
Exhibit O (Spiegel List of Mortgaged Stations)	A107
Appendix A to Plaintiff's Memorandum in Support of Rule 65 Motion (Letter from G. H. Clarkson to Spiegel, dated April 27, 1967)	A108
Affidavit of B. L. Gay, sworn to June 24, 1974	A109
Stenographer's Transcript of Hearing on Preliminary Injunction, held June 25, 1974	A116
Order, dated July 1, 1974, Restraining Defendants Pending Determination of Action	A139
Affidavit of R. L. Arnwine, sworn to July 12, 1974	A141
Exhibit A (Letter from R. G. Griffin to Spiegel, dated April 10, 1972)	A152

Page

Exhibit B (Letter from Richard Spiegel to Charles H. King, dated July 25, 1973) A153
Exhibit C (Letter from Charles H. King to Richard Spiegel, dated August 7, 1973). A154
Exhibit D (Letter from Richard Spiegel to Charles H. King, dated August 13, 1973) A156
Exhibit E (Federal Energy Office Allocation Order, dated February 1974) A157
Exhibit F (Federal Energy Office Directive, dated April 1, 1974) A158
Exhibit G (Letter from B. L. Cay to Spiegel, dated May 31, 1974) A160

Affidavit of Alfred L. Ferguson, sworn to July 12, 1974 . . . . . A161
Exhibit A (Stipulation of Settlement and Dismissal in New Jersey Action, undated) A173
Exhibit B (Letter from New Jersey Counsel for Spiegel to New Jersey Counsel for BP, dated December 29, 1973). A174

Stenographer's Transcript of Hearing on Preliminary Injunction, held July 12, 1974 . . . . . A175
Plaintiff's Exhibit 5 (Decision of New York City Environmental Protection Administration, dated May 30, 1972) A350

Affidavit of Andrew C. Hartzell, Jr., sworn to July 18, 1974 . . . . . A353
Exhibit A (Newspaper Articles, dated June 21, 1974 and June 26, 1974) A355
Exhibit D (Chart of Mortgage Data Prepared by BP) A357

Appendix of Newspaper Articles Submitted in Further Support of Plaintiff's Rule 65 Motion A359

Memorandum and Order, dated July 26, 1974, Continuing Injunction Against BP and Dissolving Injunction Against The Standard Oil Company A366

D. 74C 923 DOCKET

APPEAL

JUDD, J.

TITLE OF CASE

M. SPIEGEL & SONS OIL CORPORATION

- against -

B.P. OIL CORPORATION and STANDARD OIL COMPANY (SOHIO)

ATTORNEYS

COLE & DEITZ

[illegible] Street

[illegible]ork, N.Y. 10005

269-2500

For Defendant: DEBEVOISE, PLIMPTON, 299 Park Avenue NYC 10017

BASIS OF ACTION: Restraint of trade

Seeks: Injunction

JURY TRIAL CLAIMED

ON

DATE	PLAINTIFF'S ACCOUNT	RECEIVED		DISBURSED		DATE	DEFENDANT'S ACCOUNT	RECEIVED		DISBURSED	
20-74	Complaint	15	00			[illegible]	[illegible]	5	-		
31-74	Paid to Treas.			15	-	[illegible]	Paid to Treas.			5	-

ABSTRACT OF COSTS

TO WHOM DUE	AMOUNT	

RECEIPTS, REMARKS, ETC.

A1

SPEIGEL & SONS OIL CORP. -vs-BP OIL CORP. et ano

74C 923

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	JC
6-20-74	Complaint filed. Summons issued.	1	
6-24-74	By JUDD, J. - Order to show cause dtd 6-20-74 for an order to enjoin defts from terminating sale of gasoline to pltff, etc ret 6-25-74 at 9:30 A.M. withxxx proof of service filed.	2	
6-25-74	Before JUDD, J. - Case called. Both sides present. Oral argument on order to show cause held and concluded. Pltff's motion for preliminary injunction granted. Pltff's to submit order. Case adj'd to 7-26-74 at 2 P.M. for hearing on continuance of injunction.		
6-25-74	Affidavit of B.L. GAY in opposition to motion for preliminary injunction filed.	3	
6-26-74	Pltff's memorandum of law filed.	4	
6-28-74	Undertaking on injunction filed.	5	
6/28/74	Stenographer's transcript of 6/25/74 filed.	6	
7-1-74	By JUDD, J. - Order dtd 7-1-74 restraining defts pending determination of action filed. 7-26-74 at 2 P.M. for hearing.	7	
7-12-74	Before JUDD, J. - Case called. Both sides present. Hearing began to determine if preliminary injunction should be continued Deft's opening statement. Pltff's opening. Hearing concluded. Decision reserved. Preliminary injunction cont'd pending decision------		
7/18/74	By JUDD, J. - Order dated July 17, 1974 filed that the time for the defts to answer the complaint is extended to Aug. 1, 1974	8	
7/18/74	By JUDD, J. - Order dated July 17, 1974 filed that the time for the deft [illegible] to answer the complaint is extended to Aug. 1, 1974	9	
7/22/74	Supplemental Memorandum of BP Oil Inc. in opposition to preliminary injunction filed.	10	
7/22/74	Pltff's Supplemental Memorandum of Law filed.	11	
7/22/74	Memorandum of Deft BP Oil, Inc, in opposition to pltff's motion for preliminary injunction filed.	12	
7-25-74	Letter dtd. 7-24-74 from Andrew C. Hartzell, Jr. to Judge Judd filed.	13	
7-26-74	By JUDD, J. - Memorandum & order dtd. 7-26-74 setting 9-13-74 at 4:30 P.M. for pre-trial conference in chambers to consist requirements of discovery & setting of trial date filed (c/s 30 days) & continuing preliminary injunction until [illegible] by order of this court or appeal P.L. Oil, but dissolved [illegible] Standard Oil etc. filed.	14	

74C-923 SPEIGEL & SONS OIL CORP vs. BP OIL CORP., et ano

CIVIL DOCKET

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMT RECD & MOL. RET
7-29-74	Affidavit of Andrew C. Hartzell, Jr. in opposition to preliminary injunction filed.			1
7-29-74	Pltff's reply memorandum of law filed.			1
7-29-74	Affidavit of Alfred L. Ferguson filed.			1
7-29-74	Affidavit of R.L. Arnwine in opposition to preliminary injunction filed.			1
7-29-74	Affidavit of Alfred L. Ferguson in opposition to preliminary injunction filed.			1
7-30-74	Notice of appeal filed. Duplicate mailed to C of A. & pltff, jn			20
7-31-74	By JUDD, J. - Order dtd 7-30-74 extending time of defts to answer the complaint to 8-13-74, etc. filed.			21
8-16-74	ANSWER and counterclaim of deft BP OIL CORP filed.			22
8-16-74	Notice of motion and memorandum of law to dismiss complaint ret 9-13-74 at 2 P.M. filed.			23½
8-22-74	Pltff's cross designation of exhibits filed.			25
9/3/74	Stenographer's transcript of Hearing on Preliminary Injunction of July 12, 1974 filed.			26
9-6-74	Above record on appeal certified and handed to John Zich for delivery to C of A.			
9-6-74	Reply of M. Spiegel & Sons Oil Corp. filed			27
9-13-74	Acknowledgment rec'd from C of A for receipt of record on appeal & filed.			28

A3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

M. SPIEGEL & SONS OIL CORP.,

Plaintiff,

-against-

B.P. OIL CORP. and STANDARD OIL COMPANY (SOHIO),

Defendants.

- x

Plaintiff demands a Trial by Jury

VERIFIED COMPLAINT

Plaintiff, for its complaint herein, by its attorneys, Cole & Deitz, alleges:

1. Jurisdiction is predicated upon 15 U.S.C. §§1, 2, 15, 22, 25, 26; 28 U.S.C. §§1331, 1332, 1337; the Emergency Petroleum Act of 1973, Pub. L. No. 93-159, §5, 87 Stat. 627 ("EPA") and the Federal Energy Office ("FEO") Regulations issued pursuant thereto; 28 U.S.C. §§2201 and 2202; as well as upon Sections 1 through 34 of the Securities Exchange Act of 1934, 15 U.S.C. §§78a through 78hh, and in particular §10(b), 15 U.S.C. §78j(b), Rule 10B-5 promulgated thereunder, 17 C.F.R. 240.10b-5, §14(a), 15 U.S.C. §78n(a), Rule 14a-9 promulgated thereunder, 17 C.F.R. 240.14a-9, §27, 15 U.S.C. 78aa, and §§17 and 22 of the Securities Act of 1933, 15 U.S.C. §§77q, 77v. There is also diversity of citizenship, and pendent jurisdiction. The amount in controversy exceeds $10,000, exclusive of interests and costs.

THE PARTIES

2. Plaintiff, M. Spiegel & Sons Oil Corporation

is a corporation organized and existing under and by virtue of the laws of the State of New York. It conducts business within the State and Eastern District of New York.

3. Defendant BP Oil Corporation (hereinafter "BP") is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and has its principal place of business within the State of Ohio. BP is engaged in the sale of gasoline and other petroleum productions in interstate commerce and the State of New York. It markets and sells such gasoline and other oil products both on the wholesale and retail level, and is a competitor of plaintiff.

4. Defendant Standard Oil Company (hereinafter "Sohio") is a corporation organized and existing under and by virtue of the laws of the State of Ohio. Sohio is the parent corporation of BP, its wholly owned subsidiary. It is the sixteenth largest oil company in the United States and ranks eighty-sixth among all industrial corporations as of 1971. In 1973, Sohio had earnings of $89 million based on $1,734,000,000 in sales.

CO-CONSPIRATORS

5. Various other persons, firms and corporations not made defendants herein, including, without limitation, Power Test Corporation, and Donna Oil Corporation, have participated as co-conspirators with the defendants in the unlawful actions and violations hereinafter described and have made statements and committed acts in furtherance thereof.

VENUE

6. The acts complained of occurred in large part in and both plaintiff and BP conduct business within the Eastern District of New York.

BACKGROUND

7. Beginning in 1950 and continuing to the present time, Spiegel has been engaged in the wholesale distribution of branded and unbranded gasoline as well as other related petroleum products. In its wholesaler capacity, Spiegel currently supplies gas to over 115 gasoline stations. In that regard, Spiegel purchased over 20,000,000 gallons of gasoline from the defendants in the year 1972 having an aggregate value in excess of $1,000,000.

8. Plaintiff and its predecessor corporations commenced a business relationship with Sinclair Oil Corporation ("Sinclair") over twenty-one years ago. Sinclair was a refiner and distributor of gasoline and related products in the Eastern United States. It sold such products both directly on the retail level, and to independent distributors such as plaintiff, who, in turn, would distribute and resell such products on the wholesale and retail levels.

9. As a result of a merger, effective March 4, 1969, Sinclair was merged into Atlantic Richfield Company ("Atlantic"), another oil company. On or about that same date, Atlantic sold Sinclair's east coast marketing assets to BP, which at that time was a wholly owned subsidiary of The British Petroleum Company Limited ("BP Ltd."), a joint

stock corporation organized under the laws of Great Britain. Less than one year later, in January, 1970, BP was sold to Sohio, a corporation whose shares are traded on the New York Stock Exchange. Upon information and belief, as a result of the sale of BP to Sohio, approximately 25% of Sohio's outstanding shares are now owned by British Petroleum (Overzee) B.V. ("BPBV"), a foreign corporation affiliated with BP Ltd. (Hereinafter, "BP" shall encompass BP, BP Ltd., and BPBV unless otherwise indicated.)

10. Commencing in or about 1952, Sinclair and Spiegel entered into a distribution contract pursuant to which Sinclair would sell branded Sinclair gasoline to Spiegel, an independent wholesale distributor. In this capacity, Spiegel would distribute and sell such branded gasoline to its retail customers carrying the Sinclair flag. Customarily, such customers operated stations for which Spiegel or an affiliate corporation either owned the fee or the base lease; in the latter instance, the customer was essentially a sub-lessee. In almost each instance, the customer operated what was essentially a neighborhood gasoline station.

11. The agreement between Spiegel and Sinclair was renewed every three years for an additional three year term. Plaintiff was informed by Sinclair that the inclusion of a three year term was standard company policy, but it was represented to Spiegel that the contract would not be subject to either termination or non-renewal unless Spiegel had committed a breach of the agreement.

12. In connection with the distribution by

by Spiegel of Sinclair gasoline, Sinclair offered Spiegel financing at highly favorable interest rates in the form of marketing loans. These loans were secured by mortgages on various service station properties owned by Spiegel. By the terms of the mortgage notes all amounts loaned by Sinclair to Spiegel were to become immediately due and payable upon the cessation of Spiegel's distribution of Sinclair gasoline. The notes, a sample of which is annexed as Exhibit "A", each contain the following language:

> "The whole of the principal sum secured by this note shall forthwith or thereafter at the option of the holder of this note become due and payable if default be made in any payment under this note, or upon the happening of any default which by the terms of the mortgage given to secure this note and collateral hereto shall entitle the mortgagee to declare the same to be due and payable; and all of the covenants, agreements, terms and conditions of said mortgage are hereby incorporated herein with the same force and effect as if herein set forth at length.
>
> IT IS HEREBY EXPRESSLY AGREED that the said principal sum secured by this note shall become immediately due at the option of the holder hereof, together with accrued interest, upon the discontinuance by M. Spiegel & Sons Oil Corp. of the sale and/or delivery of Sinclair gasoline and other Sinclair refined petroleum products to the mortgaged premises hereinafter described.
>
> IT IS HEREBY EXPRESSLY AGREED that said principal sum secured by this note shall become immediately due at the option of the holder hereof, together with accrued interest, if the Distributor Agreement now in effect between M. Spiegel & Sons Oil Corp., and Sinclair Refining Company, or any renewal, extension or substitute thereof, is terminated at any time for any cause by M. Spiegel & Sons Oil Corp., or Sinclair Refining Company."

At the various times that said marketing loans were made and continuing up to the present, said marketing loans were unavailable from any other source other than

integrated oil companies which could supply the gasoline along with the extension of credit and thereby make the collateral meaningful. Further, not all such oil companies extended such marketing loans.

12(a). With respect to such marketing loans, Sinclair would typically consider and inspect the location of the proposed gas station, and if it approved same, it would loan Spiegel the necessary funds to purchase the fee, in return for a mortgage on the property. These mortgages were usually payable in monthly installments over a fifteen year period. As noted earlier, however, Sinclair insisted that each mortgage be conditioned upon and tied to Spiegel's purchase of Sinclair gasoline for sale at the particular station subject to the mortgage. In short, the mortgages would become immediately due and payable if Spiegel purchased the products of a Sinclair competitor, or if Sinclair discontinued the sale of its gasoline and other products to Spiegel.

12(b) On its face, then, this condition foreclosed Spiegel from purchasing from any competitors of Sinclair unless it could arrange for the payment of the particular mortgage in full by either the new supplier or some other entity. Similarly, it placed Spiegel in a position whereby Sinclair, in violation of its express promise to the contrary, could terminate its distributorship agreement with Spiegel, and thus accelerate the due dates of the various mortgages, in the event Spiegel proved too aggressive a competitor or otherwise conducted its business in a manner which did not prove to be in accordance with Sinclair's wishes.

12(c). The very existence of this threat affected Spiegel's marketing operations, including but not limited to retail price maintenance, its purchase of other Sinclair products, its possible construction of new stations which would compet[illegible] existing stations operated by Sinclair on a direct dealer basis, and its expansion into new territory. Thus, for example, it was not until April, 1967, that Spiegel was "granted" the right to operate in Mt. Vernon and Verplanck.

13. Subsequent to the purchase of Sinclair's assets by BP, including the contracts and mortgages which were then in effect between Spiegel and Sinclair, Spiegel entered into negotiations with BP and its parent, BP Ltd., concerning the continued business relationship between them. In addition, Spiegel had such negotiations with other oil companies, including both Philips Petroleum Corp. and Citgo. Spiegel dismissed all other distribution opportunities when officers of BP and BP Ltd. represented that they wished to continue Sinclair's relationship with Spiegel, and Spiegel was induced to believe that the agreement would not be terminated or subject to non-renewal unless breached by Spiegel. Similarly, it was represented by BP that any mortgages extended to Spiegel would not be accelerated unless a default in payment or other terms unrelated to the sale of gasoline and other products to plaintiff occurred. On May 20, 1970, in reliance upon these representations, Spiegel entered into a renewal with BP of its original distribution contract with Sinclair.

At this point in time, and continuing through 1972,

A 10

Spiegel was BP's largest, most successful and most profitable distributor in the metropolitan New York area.

14. Pursuant to the May 20, 1970 renewal, BP supplied its branded gasoline to Spiegel, and business between the companies continued without incident. After the acquisition of BP by Sohio in January, 1970, BP continued to actively encourage Spiegel's expansion in the New Jersey - New York market. Thus, in the 1969-72 period, BP approved twenty new Spiegel stations in the area and extended numerous marketing loans to it. Spiegel, in turn, purchased various properties and stations, and constructed others. By early 1972, Spiegel was servicing 126 BP branded stations and was indebted to BP in a sum in excess of $1,500,000.00. Like Sinclair, however, BP conditioned its marketing loans to Spiegel upon the purchase of BP gas.

15. In or around 1971, the exact date to the plaintiff being unknown, BP embarked upon a scheme to utilize the mortgage debt Spiegel had been induced to incur to seize and acquire Spiegel's business. Acting pursuant to a plan and conspiracy with Sohio, and other oil companies, BP proceeded to perform a series of illegal and unlawful acts, the intent and effect of which was to restrain competition and destroy Spiegel as an independent distributor and competitor.

16. In or about the latter part of 1971, BP informed Spiegel that it was considering the termination of their distribution agreement. At or about the same time, Spiegel was further informed that if it purchased unbranded gasoline from BP, this might improve its position. Thereafter and as a result of this communication, M.S.S. Economy Oil

A 11

Corporation, a corporation affiliated with and controlled by plaintiff, purchased 3,111,000 gallons of unbranded gasoline from BP during the year 1972.

17. In 1971, Spiegel decided to expand its operations to Rockland County through the acquisition of certain facilities owned by American Oil Company ("American"). Because of the conditional nature of the various mortgages held by BP, Spiegel was compelled to inform BP of this decision and offer as an alternative, to expand through the purchase of BP's facilities in that county. In reply, BP rejected plaintiff's offer, and threatened that in the event Spiegel did acquire the American stations in question, it would cease deliveries to the BP stations then operated by Spiegel in Rockland County.

18. When Spiegel proceeded with its planned expansion, pursuant to its threat, BP did in fact cut off sales of gasoline to Spiegel in Rockland County, and demanded that Spiegel purchase at an inflated price the marketing equipment and pumps which it had installed in such stations. This forced sale diminished Spiegel's financial position, and further, affected its ability to compete.

19. On April 10, 1972, BP notified Spiegel in writing that notwithstanding its express representations to the contrary, the distributorship agreement would not be renewed in June, 1973, and that Spiegel's $1,500,000 mortgage debt would become immediately due and payable, in its entirety on June 30, 1973.

20. Commencing on or about this date, and for a considerable period of time prior thereto, Spiegel exhausted

all avenues for alternate financing. Its efforts were unsuccessful, as all lending institutions customarily require evidence of a long term gasoline distribution agreement in order to make the secured interest in the gasoline properties meaningful. No such agreement was available at this point in time; nor is such a long-term supply commitment generally available in the industry, even in the absence of an alleged energy crisis.

21. Coincident with BP's announced intentions to sever relations with Spiegel, there was the advent of the purported energy crisis. With the ostensible scarcity of gasoline, Spiegel was and remains to the date of the filing of this action unable to secure alternate financing within the oil industry.

22. In an attempt to hasten its destruction, BP engaged in various predatory practices aimed at Spiegel. Included amongst those activities were the delay in gasoline deliveries to Spiegel, the discriminatory granting to Spiegel's competitors of temporary discounts, and the delaying of Spiegel's delivery trucks at the various terminals.

23. On June 30, 1972, BP breached its distribution agreement with Spiegel when it terminated all sales to Spiegel in New York City. While it is contended by BP that it was unable to distribute BP gasoline in New York City because of a ruling of the Environmental Protection Agency ("EPA"), which established low lead requirements for gasoline, BP purposefully sought not to comply with EPA requirements as a means of breaching its contractual and fiduciary relationship with Spiegel.

23(a). Among other matters: (a) BP rejected an "exchange" agreement arranged for it by Spiegel with Citgo, whereby BP could have exchanged its gasoline for the low lead gasoline required in the City of New York; (b) BP could have effected such an exchange with its parent, Sohio, which was producing and selling such gasoline; (c) every other major gasoline supplier complied with the EPA requirements; (d) BP is now producing such low lead gas; and (e) upon information and belief, BP is now supplying such gas for sale within the City of New York.

24. As a result of the aforesaid termination, Spiegel was compelled to close eleven retail outlets and to locate alternate suppliers of gasoline for the remaining New York City locations. In closing the eleven stations and seeking an alternate supply of gasoline, Spiegel incurred financial losses which further inpaired Spiegel's ability to compete with BP and other BP distributors.

25. On September 15, 1972, BP informed Spiegel that it would no longer supply it with unbranded gasoline at its Oceanside and Setauket outlets. This further diminished Spiegel's ability to operate effectively in the marketplace.

26. On November 1, 1972, Spiegel informed BP that in accordance with its instructions it had succeeded in obtaining a new source of supply for twenty-four of its branded stations on Long Island. The brokerage agreement obtained to effect this switch-over resulted in further

damage to plaintiff, since it decreased the profitability of such stations.

27. The aforesaid change of supplier caused BP to retaliate by accelerating its marketing loans and compelling Spiegel to pay highly inflated prices for its marketing equipment. Thus, on November 10, 1972, BP demanded the immediate payment of $[illegible],966.22 plus accrued interest.

When Spiegel offered to abandon its plans to switch the brand of the stations involved and to return to the BP brand, BP refused the offer and continued to demand the aforesaid sum.

28. In late 1972, Spiegel attempted to effect a "through-put" at two terminals located in Mt. Vernon and Long Island City owned by Power Test as a result of a purchase of said facilities from BP in July of 1972. A "through-put" is the placing of gasoline in storage for a short period of time at a specified rental fee.

29. The through-put was denied by Power Test on the ground that they had been instructed by BP to deny Spiegel access to its storage facilities. BP was at that time and remains the principal supplier of Power Test, a competitor of Spiegel on the wholesale and retail level.

30. On April 7, 1973, BP refused to sell any further unbranded gasoline to M.S.S. Economy Oil Corp. BP ceased its sales to four other purchasers of unbranded gas on that same date, allegedly because of the purported gasoline shortage. Within the next month, it renewed its sales to these other cut-off independents. Throughout this period BP continued to sell Power Test and Donna Corporation both branded and unbranded gasoline. Both Power Test and Donna compete with Spiegel in the metropolitan New York area.

31. On or about April 1, 1973 BP began to allocate its branded gasoline supplies to Spiegel. No such allocation was made with respect to either Donna Corporation or BP's direct retail outlets. Moreover, while BP's sales to other independent distributors were allocated, that allocation formula was altered and applied in a discriminatory fashion as to Spiegel.

32. On April 19, 1973, the foregoing events caused Spiegel to commence an action against BP in the District Court for the District of New Jersey. Spiegel sought, inter alia, to restrain BP from terminating the sale of branded gasoline to Spiegel and its affiliated companies.

33. On July 11, 1973, Spiegel was compelled as a result of duress to enter into a "settlement" agreement pursuant to which it purportedly abandoned all of its rights as against BP in return for the continued sale of unbranded gasoline and the extension of the mortgages to June 30, 1974.

34. Spiegel had no choice but to enter into this contract as BP had terminated all of its gas deliveries to plaintiff on June 30, 1973. Thus, by July 11, 1973, Spiegel and its customers had been closed down for eleven days.

35. Without the July 11, 1973 agreement, Spiegel faced demise as an operating entity, the destruction of its business built up over a twenty-five year period, and the loss of its attendant goodwill.

36. The July 11, 1973 agreement, in addition to requiring the abandonment of all claims as against BP, compelled Spiegel to pay BP the sum of $400,000 in reduction of the said mortgages. This sum was in fact paid by Spiegel, leaving a balance due of $1,100,000 which sum purportedly falls due on June 30, 1974. The loans were reduced at severe cost and damage to Spiegel, thus reducing its ability to

compete and operate effectively.

37. As part of the July 11, 1973 agreement, BP required that Spiegel purchase all of the marketing equipment previously installed in its BP branded service stations. Although the "settlement" agreement provided that the parties could select an independent appraiser to value such equipment, BP compelled Spiegel to accept an appraiser of its own choice. The valuation made by this appraiser totalled $235,000, when in point of fact, such equipment is worth no more than $35,000.

38. In or around May and June, 1974, Spiegel refused to pay an amount in excess of $35,000 for such equipment, since BP had already announced its intent to terminate the sale of gasoline to Spiegel and to accelerate its mortgages on June 30, 1974, in express violation of the Act. BP then falsely and knowingly represented that if plaintiff would pay it the sum of $137,000 for such equipment, it would abandon its threats and extend the mortgages through June 30, 1975. Spiegel, in reliance upon this misrepresentation, paid BP the sum of $137,000. Since BP now refuses to comply with its representations concerning said mortgages and gasoline sales, Spiegel has been damaged in the sum of $102,000. BP's representations were false at the time they were made and were designed to damage plaintiff.

39. Coincident with the initation of BP's attack upon Spiegel, the national energy crisis - a period of time when gasoline was ostensibly scarce - was beginning to develop. With the advent of the energy crisis large integrated fuel companies began to exclude independent distributors of gasoline from their distribution systems. Following this pattern, independent retailers of gasoline were precluded from purchasing gasoline from the integrated

oil companies, including BP and Sohio, who chose instead to favor their wholly owned retail outlets. It was during this same period and continuing up to the date of the filing of this action, that BP undertook an all-out effort to destroy all independent retailers selling BP gasoline and replace them with wholly owned gasoline stations. It was as a result of this scheme that Spiegel has been forced to close over forty stations since 1972.

40. In furtherance of this plan to eliminate independents from the market place, Sohio and BP have engaged and will continue to engage in the following activities:

(1) Notified all independent retailers of BP gasoline on Long Island that it will not renew the leased dealerships;

(2) Announced the replacement of independent BP retailers by company owned "Gas & Go" and "William Penn" stations which would be located on the same sites as many of the displaced independent retailers; and

(3) Diminished the amount of gasoline which was to be delivered in New York and New Jersey in contravention of the EPA, and the rules promulgated thereunder. During the period of February through May, 1974, the defendants have thereby withheld 13.8 million gallons of gas to the detriment of independent retailers and the consuming public. Findings and an Order to this effect were entered by the FEO in May, 1974. (A copy of this Order is annexed as Exhibit "B").

(4) Commenced and pursued their plan to destroy Spiegel and its retail customers as a competitor on the wholesale and retail markets; and

(5) Unlawfully sought to utilize the

mortgage indebtedness of Spiegel to seize and acquire its retail and wholesale business.

(6) Committed each of the unlawful acts and predatory practices heretofore set forth.

41. Defendants falsely denied under oath during the action commenced against them by Spiegel in 1973 in the District Court of New Jersey, that they planned to establish a network of company owned and operated "Gas & Go" stations in the Long Island area. This denial was false and misleading, and was designed to evade the results of the unlawful scheme and course of conduct heretofore set forth.

42. In addition to the foregoing predatory and unlawful practices, defendants sought to further diminish Spiegel's ability to compete by threatening to file and the actual filing of legal actions against it. Three such suits were actually filed in the Supreme Court for the State of New York and the District Court for the Southern District of New York in 1973, prior to the execution of the July 11, 1973 "agreement".

43. Defendants have informed Spiegel that on June 30, 1974, they will cease delivery of all gasoline supplies to plaintiff, and further, that they will accelerate the mortgages in question and unless they are paid in full, will foreclose upon them, and otherwise commence legal proceedings against plaintiff and its principals to recover the purported mortgage debt. Since July, 1973, this debt has been reduced by Spiegel from $1,100,000 to $894,000.

44. The aforesaid termination and acceleration

is in furtherance of defendants' plan to eliminate Spiegel and its customers as an independent force in the market.

45. Spiegel will be unable to satisfy defendants' demands on June 30, 1974.

46. The aforesaid termination and acceleration will result in irreparable harm to both Spiegel and its retail customers for they will be unable to operate without gasoline, the encumbered stations will be subject to foreclosure, and Spiegel itself will be subject to suit on the various mortgage notes. The result of the foregoing will be the loss of the business and goodwill Spiegel and its customers have built up over the course of their many years in the oil industry.

47. Spiegel has never been in default of either the distribution agreement or the said mortgages. It has and will continue to pay, without prejudice and under protest, all installments on such mortgages, as they come due.

TRADE AND COMMERCE

48. Refined petroleum products are marketed primarily through retail service stations. Gasoline represents approximately 90% in terms of dollar value of the refined petroleum products sold through gas stations.

49. From the time that crude oil is first extracted from the ground and sent to refineries, petroleum products are in a continuous flow of interstate commerce. The interstate commerce in refined petroleum products, including gasoline is substantial. In 1973, sales of gasoline at the

retail level through service stations was upon information and belief in excess of one billion dollars. Gasoline is also a dominant factor in interstate commerce as it is in the source of energy for 99% of all interstate transportation.

50. The major integrated oil companies of which there are approximately twenty, account, upon information and belief, for over 85% of the total industry sales at the distribution level. Often these major oil companies rely on a dual distribution system consisting of company sales to service stations and company sales to independent distributors who then sell to service stations. As the oil industry has progressed towards complete integration, the number of independent distributors such as the plaintiff have diminished. With the diminution of independent distributors the price at which gasoline is sold to independent retailers has become uniform as have the pump prices at the service stations.

COUNT I

51. The EPA and the regulations issued pursuant thereto provide, in pertinent part, that all suppliers of motor gasoline such as defendants supply their wholesale purchasers of record as of the "base period", as that term is defined in §211.102. The specific measures for allocation of such motor gasoline are set forth in §211.11.

52. Defendants have, and after the announced termination of supplies to plaintiff, will continue to discriminate against such independent wholesale purchasers in

favor of either or both affiliated wholesale purchasers or their own wholesale and retail outlets selling directly to end users. The discrimination will be facilitated, in part, by defendants' proposed discontinuance of sales to plaintiff, and their announced intent to establish, acquire and supply instead other affiliated and subsidiary outlets. The foregoing will be in express violation and circumvention of Part 211 of the Regulations, including Part 211.11 et seq. thereof, and, inter alia, will permit defendants to discriminate amongst their customers and grant otherwise unlawful increases in base period volumes.

53. No application for an "adjustment" has been filed by any of the defendants herein pursuant to the terms of §211.14. Nor have defendants sought or arranged for a "supplier substitution" in accordance with §211.25.

54. As the FEO has found, defendants have and seek to continue effecting the unlawful violation of §210.62(b) by discriminating among the purchasers of an allocated product to the detriment of plaintiff.

55. The foregoing constitutes a violation of §210.62 in that defendants seek to discontinue and cease providing plaintiff with essential services which had regularly been provided to it during the base period, as well as throughout the long relationship between them.

56. In addition to the direct violations of §210, et seq. heretofore enumerated, the actions and course of conduct adopted by defendants, as they have been designed to, have circumvented and contravened, and have resulted in a circumvention and contravention of the Regulations.

57. Defendants' course of conduct thus far and their announced intent to breach the relationship between plaintiff and BP also constitute an illegal "retaliatory action" within the meaning and intent of §210.61. Defendants' actions are but part of a plan to destroy plaintiff and capture its business because and in spite of plaintiff's insistence that BP comply with the terms of their agreement and abide by the provisions of the FEO.

58. The foregoing amounts to an unlawful attempt by defendants:

(1) To deviate from and abandon the normal business practices existing between them and plaintiff prior to the alleged energy crisis;

(2) To impose and require more stringent credit terms and payment schedules on plaintiff than those utilized during the base period; and,

(3) To modify the normal business practices between them so as to result in circumvention of the Act.

Each of the foregoing attempts constitute a violation of §210.62 of the Regulations issued pursuant to the Act.

59. As a result of its findings, the FEO issued an Order compelling BP to cease allowing Sohio to use it in any manner which circumvents or results in the circumvention of the Acts and Regulations. Despite this Order, however, defendants have continued to and unless restrained, will in fact effectuate the destruction of plaintiff, all in violation and circumvention of the Act.

60. The threatened termination would also be unlawful because it would compel Spiegel to modify its relations with its retail customers, which in itself would be violative of the Act.

61. The threatened acceleration of the mortgages would also constitute an unlawful increase in "price", as that term is defined in the Act.

62. The threatened termination and acceleration seek to circumvent the very purpose of the Act, for they are designed solely to eliminate the competitive market position of an independent marketer, i.e., Spiegel.

63. The proposed termination would violate and fail to conform with the requirements of §211.24.

64. The injunctive relief sought here is explicitly authorized by §210 of the Economic Stabilization Act of 1970, as amended, by §210.83 of the General Allocation & Price Rules, by the federal statutes heretofore mentioned, and pursuant to the principles of pendent jurisdiction, by the statutory and common law of the States of New York and New Jersey.

65. Each of the foregoing violations was and will be a wilful, intentional and knowing act committed by defendants.

66. Plaintiff, in addition to injunctive relief and damages, also seeks a civil penalty of $2,500.00 for each violation committed by defendants as provided in §210.82(a)(2) and (c) of the General Allocation & Price Rules.

COUNT II

67. Each of the acts heretofore set forth, including but not limited to the attempted termination of the distributorship agreement, and thus, of gasoline supplies to plaintiff, and the threatened acceleration of the said mortgages, are unlawful in that they constitute a breach of the express and implied agreements between the parties to this action, and a violation and abuse of the confidential and fiduciary relationship existing between Spiegel and BP.

COUNT III

68. The July 11, 1973 "settlement agreement" and all releases and stipulations which may have been executed pursuant thereto, are void as against public policy and were executed as a result of duress.

COUNT IV

69. By virtue of the terms of the various mortgage notes held by BP, the distribution contract entered into between BP and Spiegel on May 20, 1970 and the subsequent agreement dated July 11, 1973 between BP and Spiegel, and by virtue of the entire relationship of Sohio and BP to Spiegel, BP and Sohio are engaged in a contract, combination and conspiracy in unreasonable restraint of trade and commerce in the wholesale and retail distribution of gasoline in the New York metropolitan area in violation of Section 1 of the Sherman Act.

70. Pursuant to said unlawful contract, combination and conspiracy:

(1) BP and Sohio have required as a

condition of their extension of credit that Spiegel will not purchase the gasoline of any BP competitors;

(2) BP and Sohio have eliminated Spiegel as an independent competitor in the distribution of gasoline on the wholesale and retail levels in that Spiegel was compelled, influenced and controlled in the formulation and implementation of marketing decisions. These decisions include but are not limited to:

(a) The prices Spiegel would charge on the wholesale and retail levels;

(b) The choice of suppliers with whom Spiegel would deal;

(c) The customers to whom Spiegel could sell gasoline;

(d) The territories in which Spiegel would sell gasoline;

(e) Spiegel's purchase of BP unbranded gasoline to the exclusion of other suppliers of unbranded gasoline; and,

(f) The manner and timing of any planned expansion by Spiegel.

(3) BP and Sohio have threatened, attempted and unless restrained will:

(a) Eliminate Spiegel as a viable competitor in the wholesale distribution of gasoline;

(b) Eliminate Spiegel as a viable competitor in the retail gasoline business;

(c) Increase their wholesale distribution of gasoline by acquiring those retail customers of gasoline

which are currently being serviced by Spiegel;

(d) Increase their integrated market position by acquiring those retail service station properties owned by Spiegel and converting those properties in furtherance of its own marketing operation.

(4) BP and Sohio have eliminated and threatened to continue to eliminate intrabrand competition in the sale of BP gasoline thereby foreclosing to independent retailers the freedom of dealing with a supplier of their choice.

COUNT V

71. That on or about the latter part of 1977, BP and Power Test entered into a combination and conspiracy in unreasonable restraint of the aforesaid trade and commerce in violation of Section 1 of the Sherman Act.

72. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action the substantial terms of which are that Spiegel shall be eliminated as a viable competitor in the wholesale and retail distribution of gasoline.

73. In furtherance of said unlawful combination and conspiracy, BP and Power Test have denied Spiegel access to through-put facilities owned, operated or controlled by the defendant and Power Test, and, in addition, both Power Test and Donna Oil Corporation, its wholly owned subsidiary, received and upon information and belief, continue to receive discriminatory allocations of gasoline in relation to their competitors, including but not limited

to Spiegel.

COUNT VI

74. Beginning as early at 1969, the exact date being unknown to the plaintiff, and continuing to the date of the filing of this complaint, the defendants have engaged in a combination and conspiracy with other integrated oil companies to monopolize the sale and distribution of gasoline products in the United States in violation of Sections 1 and 2 of the Sherman Act. The defendants are continuing and will continue in said combination and conspiracy to monopolize unless the relief hereinafter prayed for is granted.

75. The substantial terms of the aforesaid violations have been the elimination of all non-integrated competitors in the petroleum industry, including but not limited to refiners, distributors and independent dealers. This has been effected and facilitated, in part, by the agreement, combination and conspiracy of defendants and other oil companies to plan, cause, either actively or passively, and fabricate the alleged energy crisis.

76. In furtherance of the goals of said unlawful combination the defendants have engaged in the following unlawful conduct and activities:

(1) Utilized short term leases in order to coerce dealership loyalty and adherence to defendant's suggested resale prices and purchases of tires, batteries and other accessories;

(2) Denied independent wholesalers access to storage facilities under their control;

(3) Engaged in a course of predatory pricing practices to injure independent retailers of gasoline;

(4) Instituted litigation against independent wholesalers of gasoline in order to deny said independent competitors the ability to compete;

(5) Utilized unconscionable lease and financing arrangements with independent retailers and wholesalers in order to ultimately replace said independent retailers with wholly owned marketing operations;

(6) Withheld in violation of the Emergency Petroleum Allocation Act in excess of 16 million gallons of gasoline from the New York and New Jersey markets during the period February, 1973 through May, 1974;

(7) Entered into merger agreements in restraint of trade and commerce in the oil industry, and,

(8) Committed unlawful acts and engaged in unfair competition, as heretofore set forth, in an attempt to destroy Spiegel and its retail customers as a competitive force in the industry and acquire their business.

COUNT VII

77. On various occasions during the course of dealing between the parties hereto, Spiegel executed the mortgages and mortgage notes identified in the schedule set forth in Exhibit "C" hereof. Typically, said mortgage notes were due and payable over a fifteen year term to BP or its predecessor corporations; in each case, the note and underlying mortgage was used to secure a loan extended by BP to Spiegel for the purposes of purchasing property for the establishment of a retail gasoline station. The

aforesaid note is a security within the meaning of the Securities Act of 1933 and the Securities Exchange Act of 1934. Alternatively, the distribution contract, singly or in conjunction with the related mortgage agreements, constituted an investment contract within the meaning of the aforesaid Acts.

78. At all times relevant herein, defendants, by the use of means and instrumentalities of interstate commerce and of the mail (a) employed devices, schemes and artifices to defraud; (b) made untrue statements and representations of material facts necessary in order to make the statements and representations made, in the light of the circumstances under which they were made, not false and misleading; and (c) engaged in acts, practices and courses of business which operated as a fraud and deceit upon plaintiff.

79. Both the underlying mortgage and distribution agreements, and in negotiations prior and subsequent thereto, defendants made, among others, the following representations, certifications and statements of material facts which were untrue at the time they were made, and in light of the circumstances under which they were made, were materially false and misleading.

80. Defendants represented and induced plaintiff to believe that so long as it were not in default of either the distribution agreement between Spiegel and BP (or its predecessor corporations) or the mortgage instruments themselves, the distribution agreement would not be terminated by BP. Concomitantly, defendants also represented and

induced plaintiff to believe that the mortgages would not be accelerated by BP and would remain operative and outstanding over the specified fifteen year period according to their terms. In point of fact, however, defendants knew and fully intended that the distribution agreement would be terminated and the mortgages accelerated whenever it served BP's pecuniary benefit to do so, whether pursuant to the conspiracy, allowed supra, in an attempt to acquire and seize Spiegel's business, or for any other reason.

81. In entering into the aforesaid mortgage and distribution agreement, and issuing the corresponding mortgage notes to defendants, plaintiff relied upon each of the false and misleading representations and statements made to them by defendants.

82. Defendants knew and intended that plaintiff rely upon all of the aforesaid representations, and they fully intended to deceive plaintiff.

83. Plaintiff has sustained and may hereafter sustain additional substantial damage in that defendants have sought and continue to seek to capitalize upon their false and fraudulent representations in an attempt to seize and/or destroy plaintiff's business.

COUNT VIII

84. The acts hereinbefore set forth resulted in a common law fraud perpetrated upon plaintiff, resulting in damage to plaintiff.

COUNT IX

85. The actions and failure to act of all of the defendants, as hereinabove set forth, constituted gross negligence and recklessness, on their part and resulted in damage to plaintiff.

COUNT X

86. The aforesaid practices, including but not limited to defendants' attempt to acquire and misappropriate the business and goodwill of plaintiff by illegal means, their efforts to disrupt, harass and destroy plaintiff's business activities, their attempt to interfere with plaintiff's contractual relationship with their retail customers, their actual and planned use of plaintiff's business information, customer lists and other confidential matter gained as a result of their fiduciary relationship with plaintiff, their threats to commence unfounded legal actions against plaintiff in bad faith, with the intent to intimidate and coerce, the actual filing of such suits, the threatened and actual termination of the delivery and supply of gasoline and other oil products to plaintiff, without justification therefor, their discrimination against plaintiff in favor of certain other customers, many of whom are competitors of plaintiff, all constitute unfair competition, as a result of which plaintiff and the public at large have suffered damage, and for which they should be granted injunctive relief.

COUNT XI

87. The aforesaid acts, effected by defendants

with the sole intent to inflict harm upon plaintiff and to destroy its business, and performed without other excuse or justification, have resulted and will result in damage to plaintiff, and thus are actionable as a prima facie tort.

COUNT XII

88. The aforesaid actions have been intended by defendants to interfere and have in fact interfered with the contractual relationships existing between plaintiff and its retail customers, and further, they also have interfered with the pre-contractual relations between plaintiff and Power Test, for had it not been for the unlawful conduct of defendants, Power Test would not have refused to enter into the aforesaid throughput arrangements with plaintiff.

COUNT XIII

89. The aforesaid actions constitute, inter alia, a prohibited "contract, combination, arrangement, or agreement whereby competition or the free exercise of any business activity...is or may be restrained", within the meaning of the Donnelly Act (General Business Law §340, et seq.).

COUNT XIV

90. The aforesaid acts, especially the bad faith acceleration of the mortgages, the failure of the defendants to terminate the distributorship relationship with plaintiff in good faith, and their wilful attempt to discriminate against plaintiff, in favor of other customers, both on the wholesale and retail level, in this region, as well as

in others, constitute a violation of §§1-203 and 2 615 of the Uniform Commercial Code.

COUNT XV

91. The acceleration clauses in the subject mortgages are unconscionable and void as against public policy.

COUNT XVI

92. Defendants are estopped from invoking the acceleration provisions of the mortgages or from terminating the sale of gasoline to plaintiff by reason of (a) their express and implied representations that neither the distribution agreement nor the mortgages would be terminated, except upon a default by plaintiff, and in conjunction therewith, (b) their extension of numerous long term mortgages to Spiegel, (c) together with plaintiff's reliance thereon, including but not limited to:

(1) its expansion on the retail level;

(2) its continued incurrence of mortgage debt; and

(3) its wrongfully induced commitment in 1970 to renew BP's distributorship agreement at a time when alternate sources of supply were available.

WHEREFORE, plaintiff seeks judgment:

(A) Permanently enjoining and restraining defendants from terminating the sale of gasoline to plaintiff;

(B) Permanently enjoining and restraining defendants from accelerating the aforesaid mortgages or from seeking to enforce or foreclose upon same except upon default by plaintiff in the payment of their monthly installments, as they come due;

(C) Declaring that the subject mortgages may not be accelerated, except for a default thereunder by Spiegel unrelated to the continued purchase of gasoline from defendants by plaintiff; or alternatively, that such mortgages may not be accelerated for so long as a purchaser-seller relationship exists between plaintiff and Spiegel, whether pursuant to contract or the provisions of the PMPA;

(D) Declaring such mortgage notes and/or the acceleration clause contained therein to be null and void;

(E) Declaring and setting aside the July 11, 1973 agreement and reinstating the distributorship agreement in effect between the parties since in or about 1964;

(F) Restraining and enjoining defendants from terminating said agreement except upon a default thereunder by Spiegel;

(G) Awarding plaintiff its damages on each of the causes of action herein and the civil penalties due under the First Count hereof; said damages, not including the aforesaid penalties, are in excess of $3,000,000.00;

(H) Restraining and enjoining defendants from (i) opening and establishing company owned and operated "Gas & Go" or "William Penn" stations within the metropolitan area; and (ii) attempting the elimination and/or seizure or acquisition, whether by foreclosure or otherwise, of Spiegel, its retail customers, and other independent wholesale and retail operators in the metropolitan area;

(I) Awarding plaintiff $1,000,000.00 in punitive

damages;

(J) Restraining and enjoining defendants from violating or seeking to circumvent the EPA, the Regulations issued pursuant thereto, and any other applicable law;

(K) Awarding plaintiff the costs, disbursements and reasonable attorneys fees incurred as a result of this action;

(L) In addition to the foregoing, on the fourth, fifth and sixth causes of action, plaintiff now prays that:

(1) This court adjudge and decree that the defendants have combined and conspired to restrain and monopolize interstate commerce in the wholesale and retail distribution of gasoline in violation of Sections 1 and 2 of the Sherman Act;

(2) That the defendants be enjoined from taking any further action which would impair the plaintiff's ability to compete with the defendants, including but not limited to:

(i) The termination of sales of gasoline to the plaintiff during the course of the marketing loan periods except upon the plaintiff's default in payment of the monthly installments due under the mortgage notes;

(ii) Denying the availability of gasoline to plaintiff, in relation to any competitors of the plaintiff, including but not limited to defendants' wholesale and retail sales;

(iii) The opening of wholly owned BP retail outlets within those areas where the plaintiff distributes gasoline;

(iv) Dictating those territories and customers to whom the plaintiff may sell the defendants' gasoline;

(v) Accelerating the aforesaid mortgages or otherwise seeking to collect the underlying debt except pursuant to the monthly payment schedule set forth in each such mortgage; and

(vi) Seeking to tie the continued extension of mortgage credit to the continued purchase and sale of gasoline to plaintiff.

(3) That defendants BP and Sohio pay plaintiff three times the amount of any damages to its business and property incurred by the plaintiff, which damage is estimated to be in excess of $3,000,000.00, by reason of any action of the defendants in violation of the antitrust laws, together with the costs of this action and reasonable attorneys' fees.

(4) For such other and further relief as the Court may deem necessary and appropriate.

Dated: New York, New York
June 19, 1974

COLE & DEITZ
Attorneys for Plaintiff

By A.J. D'A
Anthony J. D'Auria
A Member of the Firm
40 Wall Street
New York, New York
10005

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

M. SPIEGEL & SONS OIL CORPORATION, :

Plaintiff, : 74C-123

-against- : ORDER TO SHOW CAUSE

B.P. OIL CORP. and STANDARD OIL COMPANY (SOHIO), :

Defendants. :

- x

Upon the annexed affidavit of Lawrence Richard Spiegel, sworn to the 19th day of June, 1974, and the complaint herein, verified on the 19th day of June, 1974, by Lawrence Richard Spiegel, an officer of the plaintiff herein, and the exhibits annexed to said affidavit and complaint, and upon the motion of Cole & Deitz, attorneys for plaintiff, it is

ORDERED, that the above defendants show cause before this Court in COURT Room 11, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 25th day of June, 1974, at ~~10:00~~ 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, why this Court should not entered an Order or Orders:

OJS
USDJ

(a) Pursuant to Rule 65 of the Federal Rules of Civil Procedure, restraining and enjoining each defendant and all other persons acting in concert with them, pendente lite, from: (i) terminating the sale of gasoline

to plaintiff, (ii) from discriminating against plaintiff in favor of any other customer of defendants; (iii) violating the provisions of the Emergency Petroleum Allocation Act of 1973 and the Regulations issued pursuant thereto; (iv) accelerating the payment schedule and/or maturity date of the mortgage indebtedness due from plaintiff to defendants; (v) foreclosing upon any of the properties subject to such mortgages and, (vi) engaging in any anti-competitive, unlawful or predatory practice effecting or directed against plaintiff, its customers or accounts; and,

(b) granting such other and further relief as to the Court may seem just and proper.

Sufficient cause appearing, service of a copy of this order and the papers upon which it is based shall be made by personal delivery thereof to defendants at their Division Headquarters, located at 560 Sylvan Avenue, Englewood Cliffs, New Jersey, at or before 5:00 p.m., June 21, 1974, shall be deemed good and sufficient service.

Dated: Brooklyn, New York
June 20, 1974

U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

M. SPIEGEL & SONS OIL CORP.,

Plaintiff,

-against-

B.P. OIL CORP. and STANDARD OIL COMPANY (SOHIO),

Defendants.

- x

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

LAWRENCE RICHARD SPIEGEL, being duly sworn, deposes and says:

1. I am an officer of M. Spiegel & Sons Oil Corp. ("Spiegel") and am familiar with the facts hereinafter set forth. Spiegel is now and has been for over twenty-five years an independent distributor of gasoline, serving a function which, because of the energy crisis, has been much in the news lately. Indeed, it was to ensure the continued survival of independents that, in December, 1973, Congress enacted the Emergency Petroleum Allocation Act ("EPA" or the "Act").

2. For many years Spiegel has purchased gasoline from B.P. Oil Corp. ("BP") and its predecessor, and has distributed this gasoline to service stations located largely on Long Island and in New York City. Some of these service stations are run by Spiegel or an affiliated company

and have been leased to gas station operators on long term leases. Others of Spiegel's customers own their stations but are dependent upon Spiegel for their continued supply of gasoline. At the present time Spiegel distributes gasoline to approximately 150 retail stations in the metropolitan New York area.

3. In the main, all of Spiegel's customers are typical neighborhood service stations. They are either family run or one and two man operations. Spiegel's relationship with them has been a long and fruitful one. Over the years these service station operators have enjoyed a measure of success only by virtue of expending the extraordinary time and effort required of small neighborhood service stations.

4. On June 30th of this year, defendants propose, by the mere stroke of the pen, to undo all of these years of effort and to force Spiegel and its customers out of business. Defendants will accomplish this result by the simple expedient of refusing to sell any more gasoline to Spiegel. Since this refusal to sell is in direct violation of the EPA, is anti-competitive in the extreme, and is manifestly unconscionable, Spiegel has instituted this action and brought on this motion to prevent so inequitable an event from occurring.

BACKGROUND

4. Spiegel and its predecessor corporations entered into a distribution contract with Sinclair Oil

A41

Corporation ("Sinclair") over twenty-one years ago (Exhibit "A"). This agreement was renewed every three years for an additional three year term. Plaintiffs were informed by Sinclair that the inclusion of such a three year term was standard company policy, but it was represented to us that the contract would not be subject to either termination or non-renewal unless Spiegel had committed a breach of the agreement. Indeed, Sinclair did in fact abide by this agreement, because the distribution contract was renewed for over a seventeen year period, until Sinclair's acquisition by BP.

6. Perhaps more importantly, the relationship between Spiegel and Sinclair was far more than a mere supplier-distributor arrangement. For Sinclair also provided the financing for the construction and establishment of new gas stations in the metropolitan area. Over 75 such marketing loans were extended to Spiegel during the course of their long relationship. And in each case, the term of the mortgage was for a fifteen year period. (A copy of one such mortgage is annexed as Exhibit "B" hereto.)

7. This relationship with Sinclair continued until March 4, 1969, when Sinclair's east coast marketing assets were sold to BP, which at that time was a wholly owned subsidiary of The British Petroleum Company Limited ("BP Ltd."), a joint stock corporation organized under the laws of Great Britain. Less than one year later, in January, 1970, BP was sold to the Standard Oil Company (Sohio), and to this date, it remains its wholly owned subsidiary. As a result of this sale, approximately 25%

of Sinclair's outstanding shares are now owned by British Petroleum (Overseas) B.V. ("BPOV"), an affiliate of BP Ltd. (See Exhibit "C" hereto).

8. After BP's acquisition of Sinclair, Spiegel was assured that BP wished to continue the relationship with Spiegel on the same basis as before. In short, Spiegel was induced to believe by Mr. Alexander of BP N.A. and others that the agreement would not be terminated or subject to non-renewal unless breached by Spiegel. It was in reliance upon this course of parties of a long and contractual business relationship that Spiegel entered into a renewal with BP of its original distribution contract with Sinclair on May 20, 1970. See Exhibit "D". It is of more significance that in 1970, the alleged gasoline shortage did not yet even exist, gasoline supply was plentiful, and it would have been possible for Spiegel to obtain a distributorship agreement from another oil company. Moreover, at this point in time, Spiegel was BP's largest, most successful and most profitable distributor in the metropolitan New York area. (Annexed hereto as Exhibit "E" is a BP marketing report to this effect.)

9. Spiegel's continued expansion in the New Jersey-New York area was also actively encouraged by BP, which continued Sinclair's policy of financing the establishment of neighborhood gas stations (Exhibit "F"). In point of fact, BP approved twenty new Spiegel stations in the metropolitan area during the 1970-72 period. It extended numerous marketing loans to Spiegel, and both Spiegel and its customers relied upon BP's policy by purchasing various

properties and constructing their stations. Significantly, as before, each of the mortgages extended by BP was typically for a fifteen year term. (A copy of one such mortgage is annexed as Exhibit "G").

10. Thus, it came to be that in early 1972, Spiegel was servicing 126 branded stations, and using BP unbranded gas to supply, in whole or in part, 15 private brand stations. Moreover, its mortgage indebtedness to BP exceeded $1,500,000.00.

11. In 1972, however, it became evident that an energy crunch would strike the New York market, and indeed, the entire country. It was at this point in time that BP announced that on June 30, 1973, it would not execute the standard renewal of Spiegel's distributor agreement (Exhibit "H"). Instead, it embarked upon a plan to expand its company owned retail operations by seizing and acquiring Spiegel's business and the stations which it services. It sought to accomplish this objective by violating its express representations to Spiegel and abusing the fiduciary relationship which had existed for almost a quarter of a century. Indeed, the very heart of its ambitious plan was grounded upon an acceleration provision which had been included in each of the long-term mortgages which had been extended to Spiegel. Namely, that the principal of the mortgage would become immediately due and payable in the event Spiegel purchased gasoline sold by BP's competitors, or alternatively, if BP elected to discontinue the sale of such gasoline to Spiegel. (See, e.g., Exhibit "I" hereto).

BP simply sought to trigger the acceleration by

terminating Spiegel's franchise immediately. And, it did so despite the fact that Spiegel was never in default under either the distributorship agreement or the related mortgages. Indeed, at that time Spiegel had paid each monthly installment due on these mortgages on a timely basis, and it has continued to do so.

12. As soon as it's intentions became evident, Spiegel did all in its power to obtain alternate financing. Its efforts were unsuccessful, for as in the past, the financial institutions and mortgagees that required a distributorship contract or a franchise tie-in on supply for a period commensurate with the length of the mortgages requested. This, especially in the advent of the gasoline shortage, was wholly unavailable from any source. BP would any other oil company from Spiegel's mortgages. This condition remains true to this very day.

13. Having applied this enormous financial pressure upon Spiegel, BP proceeded to employ every means at its disposal to destroy and further diminish its business capability. Acting in concert with others, it effected a series of unlawful and predatory acts, the substance and effects of which are set forth in detail in the verified complaint submitted herewith.

14. Although Congress was at this time considering remedial legislation to protect independents like Spiegel and the retail customers it serves from destruction and acquisition by major oil companies such as BP, it had not yet acted as of June 30, 1973. On that date, BP terminated

delivery of all gasoline supplies to plaintiff. Thereafter, Spiegel and its customers went without gas for eleven days. Their stations were closed, and the threatened loss of their business had become a reality. The hard work which my father, brother and I had put into the business for over a quarter of a century was to be forfeited. And this same loss was confronting each of our customers, who, as always, were looking to Spiegel for their livelihood - gasoline.

15. Since we were unable to pay the $1,500,000.00 in mortgages which purportedly fell due on that date, we had no choice but to execute an "agreement" with BP on July 11, 1973 (Exhibit "J"). Basically, in return for abandoning all of Spiegel's rights as against it and Sohio for breach of contract, and certain antitrust violations, BP agreed to sell unbranded gasoline to Spiegel and its customers and extend the various mortgages for a one year period, ending June 30, 1974. As a further condition, BP extracted from Spiegel a payment of $400,000.00 in reduction of its $1,500,000 mortgage indebtedness. There can be no doubt but that this agreement was executed while Spiegel was under duress, for the sole alternative available to it was to prosecute its legal claims against BP, while permitting it to effect the wholesale seizure of its business. This route would have offered little comfort not only to Spiegel, but equally as important, it would have offered no remedy at all to those individuals who operate the stations serviced by Spiegel. Indeed, by July 11, 1973, BP had already commenced foreclosure actions in Nassau and Suffolk Counties against eleven such stations.

16. The year extension provided for in the July 1973 agreement expires on June 30, 1974. BP has already informed Spiegel that unless the mortgages are paid in full on that date, it will terminate its gasoline deliveries to Spiegel and its customers. Even if this termination would be unconscionable, unlawful and in express violation of the EPA, Spiegel seeks a preliminary injunction restraining BP from terminating its sale of gasoline to plaintiff, and concomitantly, from accelerating or foreclosing upon the mortgages until a default thereunder by Spiegel, or alternatively, until the lawful termination of gasoline supplies to plaintiff.

17. Fortunately, subsequent to the July, 1973 "agreement", Congress acted to protect the independent wholesale and retail gasoline dealers from the tactics which BP utilized and proposed to utilize against the plaintiff in the case at bar. The enactment of the EPA in November, 1973 and the regulations issued pursuant thereto make it abundantly clear that the oil companies must treat their customers on the same basis in effect between the parties during the "base year" of 1972. Moreover, the regulations establish beyond cavil that no matter the pretext, the oil companies must continue to supply their 1972 base period customers. In sum, the termination of gasoline sales, such as proposed here by BP, is strictly prohibited.

18. Indeed, even BP concedes that pursuant to the EPA, it must continue to sell gasoline to Spiegel until February, 1975, when the Act is scheduled to expire. But

it argues that unless the mortgages are paid in full on June 30, 1974, Spiegel will be in default, and thus BP's obligation to deal with it would terminate. This tautology defies both reason and the plain words of the Act.

19. Historically, the continued extension of credit pursuant to the mortgages has always been conditioned upon and tied to the continued purchaser-seller relationship between Spiegel and BP. Since that relationship must of necessity continue through February, 1975, the mortgages should not be accelerated until that date (if acceleration is proper under any circumstances). To so hold would do no more than give effect to the expressed intentions of the parti-.

20. This result is also mandated by the regulatory scheme established by Congress. First, as BP concedes, the Act requires that it continue to supply Spiegel with gasoline. But it also provides that those sales be effected according to the customary business relations between the parties prior to the alleged energy crisis. In the case at bar, there can be no doubt but that the existence of the mortgage credit was and is an integral part of the relationship between BP and Spiegel and a requisite element of their normal business practices. Indeed, to permit BP to condition further sale of gasoline upon payment of the mortgages would constitute both the imposition of a more stringent credit term and payment schedule, and an unlawful increase in "price", as that term is defined in the regulations. And equally as important, BP's refusal to provide

mortgage credit during this period of crisis would amount to nothing more than an attempt to modify the normal business relations between the parties so as to result in a circumvention of the Act. Thus, while it would be otherwise prohibited from terminating Spiegel on June 30, 1974, it seeks by the simple expedient of accelerating the mortgages to effect the same result.

21. Any doubt in this regard must be resolved in favor of plaintiff when one considers the policy reasons underlying the Act. Indeed, Section 4(D) specifically provides that the protective legislation was enacted to "preserve the competitive vitality of...nonbranded...and branded independent marketers", such as Spiegel and its customers. Yet, BP proposes to destroy those very elements of the competitive market by "accelerating" the mortgages it had so freely extended prior to the present emergency.

22. Nor can there be any doubt concerning the motivation for BP's position. The fact of the matter is that BP has decided to expand its company-owned and operated retail operation in the metropolitan area at the expense of Spiegel, its customers and the other independents operating here.

This expansion will be effected by the establishment of company owned and operated "Gas & Go" stations, which will offer nothing but gas and oil to the consumer; no other services or repairs will be permitted in such stations. This marketing device was first utilized by BP in December, 1972, and since that date, it has opened six

such stations in New Jersey, ten in Pennsylvania and sixteen in Maryland. Although less than one year ago BP denied that it either planned such Gas & Go stations in the metropolitan area, or that the establishment of this marketing program was related to its attempt to destroy Spiegel, these denials have proven to be false. See, e.g., Exhibits "K" and "L" hereto.

23. Indeed, its mode of operation is evident from its treatment of those independents who had previously leased their station from BP. Typically, the dealer's lease is terminated, and in lieu of the business and goodwill he had generated as a result of his labor over the years, BP graciously offers him a position as one of its salaried employees. In this manner, BP is not only able to appropriate the dealer's business at no cost whatsoever, but it can now control the market operations of a previously independent force in the market (see Exhibit "M" hereto). And not surprisingly, this control extends to such items as resale price maintenance, a practice which would otherwise be in violation of the antitrust laws.

24. In the case at bar, BP simply proposes to use the acceleration of Spiegel's mortgages, in lieu of the lease termination it has utilized against the independents on Long Island. And when Spiegel proves unable to pay the mortgages, BP will terminate its supply of gas and foreclose. This ruse will enable it to both destroy Spiegel and its customers as competitors, and acquire their business at forfeiture prices. The scenario is familiar, but unconscionable and unlawful as well.

25. This is not the first instance in which BP and Sohio have violated the Act in pursuit of profit and competitive advantage. For, in May, 1974, the Federal Energy Office found, inter alia, that:

(A) Defendants had discriminated against their customers in the New Jersey - New York area;

(B) Defendants had decided to and did embark upon a plan to circumvent the Act and the regulations issued pursuant thereto;

(C) Defendants supplied customers who were not base period customers, including Good Hope Refining, Inc., Tenneco and others, while refusing to supply, in whole or in part, their base period customers, all in violation of 10 CFR Part 211;

(D) Defendants accumulated excessive and illegal inventories of supplies, rather than distributed them to base period customers, all in violation of 10 CFR Part 211;

(E) Defendants had reported to the FEO invalid and inaccurate supplier's allocation fractions for their BP, Sohio and other subsidiary marketing operations;

(F) The foregoing practices have caused and would continue to cause irreparable harm to the defendants' customers and the public interest in general; and

(G) The foregoing practices have caused and would continue to permit defendants to circumvent and violate the provisions of the Act and the regulations issued pursuant thereto.

As a result of these findings, an Order was entered enjoining BP from violating or from attempting to circumvent

the provisions of the Act and the regulations issued pursuant thereto (see Exhibit "N" hereto). Unfortunately, this has not persuaded BP to abandon its present scheme.

26. Nor is it without import that in a market notable for its anti-competitive nature, both Sohio and BP have consistently been found to be in violation of the antitrust laws. Indeed, the very merger between these two companies was challenged by the U. S. Justice Department and a partial divestiture ordered pursuant to a consent decree entered in January, 1970. See CCH 1970 Trade cases ¶72,988. And significantly, Sohio and BP are now alleged to be in violation of that very decree.

Even more importantly, in 1972, the Federal Trade Commission filed an action against Sohio, alleging that it utilizes its short-term lease policy and its heavy concentration of company operated stations to control its dealers and their resale prices. See, CCH 1973 Trade cases ¶20,208. These actions, coupled with the FEO's findings in connection with the defendants' discriminatory marketing practices, demonstrate rather clearly that to the BP and Sohio management, adherence to the law is but a trifling matter when found to be adverse to their pecuniary interests. In point of fact, Sohio's net income after taxes increased dramatically from $57 million in 1972 to $89 million in 1973, while BP Ltd. improved its first quarter performance from $112.7 to $707.2 million in net income for the three months ending March 3, 1974. During the same quarter, Sohio's net income increased from $17.5 to $22.6 million.

27. In the final analysis, then, there is little doubt but that plaintiff is entitled to the preliminary relief it seeks on this motion. BP proposes to do nothing more than violate, in word and intent, the remedial legislation enacted by Congress to protect Spiegel and its customers. The effect of this action will be the termination of gasoline supply to Spiegel's customers, and the forfeiture of the encumbered stations through foreclosure proceedings. (A list of the mortgaged stations is annexed as Exhibit "O"). At this early stage of the litigation, Spiegel asks only that the Court prevent this irreparable harm by restraining BP (1)from terminating its sale of gas, and (2) from accelerating and foreclosing upon the subject mortgages until the purchaser-seller relationship mandated by the EPA is terminated pursuant to law. The former is expressly required by the Act, while the threatened acceleration and foreclosure would not only be violative of the Act, but would also do violence to the very terms of the mortgage instruments in question. Since the Act is scheduled to expire in February, 1975, this would amount to a temporary restraint of but seven months. In that interim, discovery may proceed and this action could be prepared for trial. Moreover, throughout this period of time, Spiegel is prepared to pay the monthly installments on the various mortgages as they come due. Indeed, since July, 1973, Spiegel has already reduced the mortgage debt from $1,100,000.00 to $894,000.00. Under these circumstances, BP can suffer no possible harm and will in fact receive the benefit of the bargain it entered into at the time it extended the mortgages to Spiegel. The alternative is the very demise of Spiegel and the customers who have placed their faith in it. As a balancing of the equities indicates then, this Court must do

equity and grant the injunction.

28. No prior application for the relief requested here has been made to this or any other court.

LAWRENCE RICHARD SPIEGEL

Sworn to before me this
19th day of June, 1974.

Notary Public

SALLY FINGERMAN
Notary Public, State of New York
No. 24-6293960 Qual. in Kings Co.
Certificate filed in New York County
Commission Expires March 30, 19 76

(4)

THIS AGREEMENT, made this 29th day of [illegible], 1953, by and between Sinclair Refining Company, a Maine corporation, as Seller, and Elko Bird Furniture Co., a domestic corporation, having its principal business office at 401 Broadway, New York 13, New York, as Purchaser;

W I T N E S S E T H :

WHEREAS, Purchaser is engaged in the business of selling gasoline at wholesale and desires to obtain its supply of such product from Seller; and,

WHEREAS, Purchaser does not have available bulk storage for gasoline and has requested Seller to make deliveries of the gasoline purchased by Purchaser from Seller to customers of Purchaser for the account of Purchaser; and,

WHEREAS, Purchaser represents that another supplier has offered to sell gasoline to Purchaser, to deliver such gasoline to Purchaser's customers for the account of Purchaser, and to grant Purchaser an allowance at least equal to the allowance hereinafter mentioned; and,

WHEREAS, Seller is willing to sell gasoline to Purchaser and to deliver the gasoline so purchased to customers of Purchaser upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutuality hereof and of the terms and conditions hereinafter set forth, it is agreed by and between the parties as follows:

Seller agrees to and hereby does sell to Purchaser and Purchaser agrees to and hereby does buy from Seller, during each yearly period this agreement is in effect, not less than two million four hundred thousand (2,400,000) gallons nor more than three million (3,000,000) gallons, in the aggregate, of Sinclair H-C Gasoline and Sinclair Power X Gasoline.

PRICES: For each delivery of any of the above products Purchaser shall pay Seller's official established price per gallon to dealers (without any discount or deduction therefrom) for tank wagon deliveries of such product prevailing at the time and for the place of each delivery, as posted at Seller's bulk plant from which delivery is made, less an allowance of One and Eight Tenths (1.8¢) cents per gallon with respect to Sinclair H-C Gasoline and Two and Five Hundredths (2.05¢) cents per gallon with respect to Sinclair Power X Gasoline. Purchaser agrees that Seller shall have the right to change said prices from time to time without notice to Purchaser except as posted at Seller's said bulk plant and as shown in Seller's invoices.

In no event shall the net prices to Purchaser, exclusive of applicable taxes and after deduction of the aforesaid allowances on any of the above products, be less than Nine and Eight Tenths (9.8¢) cents per gallon for Sinclair H-C Gasoline and Eleven and Three Tenths (11.3¢) cents per gallon for Sinclair Power X Gasoline.

PLACE OF DELIVERY: The gasoline purchased hereunder shall be delivered from day to day in fairly even monthly quantities by Seller's tank wagons to such customers of Purchaser as shall be set forth in a list identified by the parties as Schedule "A" attached hereto and made a part hereof. Purchaser may from time to time submit the names of proposed additional customers of Purchaser located

Ex A

(4)

in the Counties of Kings, Queens and Nassau, State of New York, to be served by Seller pursuant to the terms hereof. It is nevertheless understood that Seller shall be under no obligation to make deliveries to any such proposed additional customers of Purchaser until and unless Seller agrees to do so in writing. It is further understood that in the event Seller shall elect to and does add by written agreement one or more customers of Purchaser to the said Schedule "A", which shall thereupon be deemed to include such additional customers, then all the terms and conditions hereof shall apply to deliveries of gasoline made by Seller to such additional customers. Seller agrees that it will not unreasonably refuse to add new customers to the said Schedule "A". In the event new customers are added to said Schedule "A" or in the event customers listed therein shall for good cause cease to be supplied pursuant to this contract, there shall be a reasonable adjustment of the maximum and minimum annual gallonage to be delivered under this contract as heretofore specified.

(10)

DURATION OF AGREEMENT: This agreement shall continue in effect for one (1) year commencing on the first day of July, 1953, and from year to year thereafter subject to termination by either party at the expiration of one-year period herein specified or at the end of any yearly period thereafter upon thirty (30) days' previous notice in writing to the other party.

(11)

TERMS OF PAYMENT: Net cash (without discount) 10 days. If Seller shall extend credit to Purchaser the right to withdraw credit at any time is reserved by the Seller. Payments shall be made by Purchaser in lawful money of the United States, or its equivalent, and shall be made to Seller's agent at 1117 Grand St., Brooklyn, New York, 266 East Shore Road, Great Neck, L.I., N.Y., and Hampton Road, Oceanside, L.I., N.Y.

ADDITIONAL PROVISIONS:

1. In addition to the prices herein provided, Purchaser shall pay Seller amounts equivalent to any and all taxes, duties, charges and Federal or New York State inspection fees, if any, and any and all increases therein, which are now or may hereafter be imposed, directly or indirectly, by any domestic governmental authority or agency on, against, in respect of or measured by the products covered by this agreement, or any material contained in such products, or the importation, exportation, production, manufacture, sale, transportation, delivery or other handling of such products or material or any feature thereof or of this agreement. The amounts of any such taxes, duties, charges or inspection fees shall be added to the prices herein provided when Seller either pays or becomes liable for the payment of any such taxes, charges or inspection fees.

2. Purchaser shall not change or alter by any means whatsoever the nature, quality, or appearance of any of the products purchased and sold hereunder. Any violation of this provision by Purchaser shall give Seller the right to suspend immediately further deliveries hereunder of such products or to terminate this contract forthwith.

3. Seller shall have the right at any time and from time to time during the life of this contract to change, alter, or amend any of the trade names, brands, or color under which the products covered by this contract are now or may hereafter be marketed; provided that Purchaser shall be permitted to purchase hereunder any

and all trade names, brands or colors of products marketed by Seller in the area covered by this contract.

4. Failure or refusal by Purchaser to comply with requirements, which Seller may impose hereunder as to payments shall entitle Seller to suspend deliveries pending such failure or refusal, or to terminate this agreement forthwith. The suspension of deliveries or termination of this agreement under any of the conditions herein set forth shall not in anywise prejudice Seller's claim for damages.

5. Seller shall not be obliged to furnish any of the products hereunder, nor be liable in damages for failure so to do, in the event Acts of God, strikes, lockouts, fires, or acts governmental authority, war conditions in this or any foreign country, accidents, delays by railways or other methods of transportation, reduction of Seller's supply of such products or containers thereof at any point from which Seller customarily would make shipments hereunder, or other causes beyond its control, render it impossible or inexpedient for Seller so to do.

6. The sale of any motor fuel which may contain tetraethyl lead or any other anti-knock compound under this contract is subject to (a) all the provisions contained in the agreements under which Seller is licensed to manufacture any motor fuel containing any such compound and (b) compliance by Purchaser with all such provisions, rules, regulations and orders now in existence or which may hereafter be issued by the licensor or any governmental authority having jurisdiction insofar as the same apply to motor fuel purchased by Purchaser from Seller. If Purchaser shall fail or refuse to comply therewith, Seller may either suspend deliveries of such motor fuel or terminate this contract as to motor fuel. It is expressly agreed that any such gasoline containing tetraethyl lead or other anti-knock compound is sold for use as a motor fuel only and is not to be used or resold for cleaning purposes. Purchaser agrees to impose obligations similar to those contained in this paragraph on Purchaser's buyers for resale.

7. The sale by Seller and the purchase by Purchaser of gasoline containing tetraethyl lead or other anti-knock compound is conditional upon the procurement by Seller of proper licenses for the manufacture of such gasoline. If any such license of Seller shall be terminated or cancelled for any reason, Seller shall have the right to discontinue the use of tetraethyl lead or other anti-knock compound, or Seller may terminate this contract.

8. As in the manufacture of gasoline containing tetraethyl lead or other anti-knock compound Seller is dependent upon its licensor or licensors for its requirements of such tetraethyl lead or other anti-knock compound, it is understood and agreed that if Seller's licensor or licensors shall at any time during the period of this contract delay shipment of any of the said compound ordered by Seller so as to result in a curtailment of Seller's production of such gasoline, Seller shall be required to deliver to Purchaser hereunder during such period of curtailment only such portion of any requisition or requisitions of Purchaser as Seller in its discretion may decide its then available stock of such gasoline will permit; provided that Purchaser shall be supplied a fair proportion of such stock based on its previous purchases.

9. Purchaser agrees that in selling, offering for sale and advertising gasoline purchased hereunder to comply with the regulations and requirements of the supplier of tetraethyl lead or other anti-knock compound with respect to the registered trade-mark design

and name thereof in a form satisfactory to such supplier and to Seller.

10. If at any time during the life of this contract Seller shall discontinue the marketing of gasoline under the trade names hereinbefore mentioned, Seller shall have the right and privilege of delivering thereafter such gasoline under such trade names as it may desire; provided that Purchaser shall be permitted to purchase hereunder any and all trade named products marketed by Seller in the area covered by this contract.

11. The failure of either party to insist, in any one instance or more, upon the performance of any of the terms or conditions of this contract, or to exercise any right or privilege herein conferred, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, but the same shall continue and remain in full force and effect.

12. Seller hereby authorizes Purchaser to use the trade-marks and brand names of Seller solely on and in connection with the products purchased from and so identified by Seller, the same to be used during such time only as this contract shall be in effect. If Seller shall lend to Purchaser or permit Purchaser to use any sign or device of any kind bearing Seller's name or any trade-mark, brand name, symbol or slogan, to be used for the purpose of identifying or advertising Seller's products, Purchaser agrees upon demand to return such sign or device to Seller and to discontinue the use of any word, name, phrase or thing which Purchaser is hereby authorized to use. Purchaser is permitted to use Seller's said name, trade-marks, brand names, signs, devices and slogans only upon the following conditions: (a) that they will be used in such way only as Seller may authorize; (b) that they will not be used in the identifying or advertising of any products except those supplied by Seller; (c) that Purchaser will not permit anyone else to exercise or use any of the rights, privileges or things granted or lent to Purchaser; (d) that Purchaser will not claim any right, title or interest in or to Seller's trade-marks, brand names, signs, devices and slogans; and (e) that Purchaser will never directly or indirectly deny or assail or assist in denying or assailing the sole and exclusive ownership of Seller in and to the same. Failure or refusal by Purchaser to comply with the terms and conditions set forth herein shall entitle Seller to terminate forthwith the within contract; but such termination shall not in anywise prejudice Seller's claim for damages.

13. This contract cannot be assigned by either party in whole or in part without the consent of the other party in writing first obtained.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

ATTEST:

Assistant Secretary

SINCLAIR REFINING COMPANY,

By _____ Vice President

ATTEST:

Secretary

BLUE BIRD PETROLEUM CORP.,

By _____ President

(12)

12

PLUMBING PLUMBING CORPORATION

PURCHASER	ADDRESS	BULK PLANT SERVING	P.O.
White Rose Petroleum Corp.	Bell Blvd. & 35th Ave., Bayside, L.I.	Great Neck	888
Thriftway Service Station	Jericho Turnpike & Roslyn Rd., Nincola, L.I.	Great Neck	889
White Rose Petroleum Corp.	Atlantic & Ocean Avenues East Rockaway, L.I.	Oceanside	883
Silray Service Station Inc.	Peninsula Blvd. & Rockaway (Old) Turnpike, N. Lawrence, L.I.	Oceanside	882
White Rose Petroleum Corp.	Baldwin Rd. & Hohman Blvd., Hempstead, L.I.	Oceanside	878
Tower Service Station	1202 Broadway, Hewlett, L.I.	Oceanside	879
Toby's Service Station	184 Merrick Road, Lynbrook, L.I.	Oceanside	881
Ancel Service Station	Central Dr. & Jerusalem Ave. Massapequa, L.I.	Oceanside	(Newtown)
Leonie's Service Station	Glenmore & Atkins Aves., Brooklyn, N. Y.	Newtown Creek	

To be added

Socony Service Station	Beach Channel Dr. & 9 St. Rockaway, L.I.	Mill Basin
Sun Service Station	13th Ave. & 71 St. Brooklyn, N. Y.	Mill Basin
Shell Service Station	729 New Lots Ave. Brooklyn, N. Y.	Newtown Creek
Texaco Service Station	Snediker & Pitkin Aves. Brooklyn, N. Y.	Mill Basin

SCHEDULE "A"

Seller

Purchaser

THIS AGREEMENT, made this 1st day of May, 1970, by and between BP OIL CORPORATION, a Delaware Corporation authorized to transact business in the State of New York as a foreign corporation, having its principal business office at 7 Executive Park Drive, Atlanta, Georgia, 30329, as Seller, and M. SPIEGEL & SONS OIL CORPORATION, a domestic corporation having a business office at 46 Atlantic Avenue, Lynbrook, New York, as Purchaser.

W I T N E S S E T H:

WHEREAS, the parties hereto have heretofore entered into an agreement dated July 1, 1964, as extended by agreement dated March 21, 1967, covering respective purchase and sale of certain quantities of BP petroleum products, and

WHEREAS, the parties hereto mutually desire to amend and extend said agreement as hereinafter specified,

NOW, THEREFORE, in consideration of the sum of ONE and 00/100 ($1.00) Dollar in hand paid, the receipt of which is hereby acknowledged by each party, and in consideration of the mutuality hereof, it is hereby mutually stipulated and agreed as follows:

1. That the term of said agreement is hereby extended for an additional period of three (3) years beginning July 1, 1970.

2. That beginning on and after the first day of July, 1970, and for the term of said agreement as heretofore and hereby extended purchaser shall be entitled to allowances at the rate of three and fifteen hundredths cents (3.15¢) per gallon with respect to BP Regular gasoline and three and forty hundredths cents (3.40¢) with respect to BP Super gasoline for deliveries to its retail outlets, subject to said agreement.

Except as herein amended and extended, all the provisions of said agreement dated July 1, 1964, as amended and extended by agreement dated March 21, 1967, shall continue in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first above written.

ATTEST:

Assistant Secretary

BP OIL CORPORATION

By _____
Vice President

ATTEST:

Assistant Secretary

M. SPIEGEL & SONS OIL CORPORATION

By _____
President

Ex D

METRO NEW YORK DISTRIBUTORS
AN ANALYSIS OF
OUTLETTING PERFORMANCE

MARKETING INFORMATION DEPARTMENT

November, 1969

D. B. Burvee

Ex E

A61

TABLE OF CONTENTS

	Page
List of Schedules	i
Introduction	1
Methodology	1
The Analysis	2
Volume by Cost Center	5
Volume Summary	6
Marketing Equipment	6
ITLOP Expenditures	7
Accounts Receivable	7
Marketing Loans	8
Profitability Analysis	8
Summary of the Analysis	14
Appendix	15

LIST OF SCHEDULES

Schedule		Page
1	Distributor Marketing Area	2
2	Volume by Cost Center	5
3	Volume by Distributor	6
4	Equipment by Distributor	6
5	ITLOP Expenditures by Distributor	7
6	Average Accounts Receivable	7
7	Marketing Loans Outstanding	8
8	Donna Oil Corporation	9
9	M. Spiegel & Sons	10
10	Park Stations Inc.	11
11	Wesco Petroleum Co., Inc.	12
12	Wisser Oil Company	13
13	Operating Comparison	14

METRO NEW YORK DISTRIBUTORS
AN ANALYSIS OF
OPERATING PERFORMANCE

INTRODUCTION

An analysis of the five Metro New York Distributors requires a comparison of volume through-put with profitability and investment costs. The purpose of this analysis is to determine, at the operating level, the estimated profitability of the five metro distributors.

Methodology

The analysis is based on current 9 month 1969 volumes, realizations, product and delivery costs. Certain assumptions were made, which are as follows:

1. Full year 1969 volumes were estimated based on a straight-forward projection of actual 9 month 1969 volumes.

2. Current 9 month 1969 realizations, product and delivery costs were projected at a constant rate and were assumed to be the "best available" to use with the full year 1969 volume projection.

3. Current product costs were based on current contract rates.

4. Current delivery costs were based on the average cents per gallon total delivery costs of the Cost Centers which supply the individual distributor service station locations.

5. Depreciation and amortization charges were based on the actual marketing equipment furnished and ITLOP expenditures made at the various accounts. ↑ $

6. Maintenance expense is based on a standard rate of .25 cents per gallon. Included in the maintenance rate is a charge of .10 cents per gallon to cover other miscellaneous expenditures and non-determined costs. LOW

7. Marketing loans outstanding were averaged to give "workable" cash flow determinations of the present day values, interest rates and amortization periods of the loans.

8. District and other overhead costs were not allocated to the various distributor accounts.

9. Calculations to show investors' returns were not considered, as the investment base consists mainly of basic marketing equipment and loans.

10. The pay-out period is considered the "risk determination factor". For the analysis, accounts receivables were included in the pay-out calculations as normal investments.

THE ANALYSIS

The five metro distributors operate throughout the metro New York marketing area. The service stations are supplied by five BP Oil Cost Centers. Schedule 1, shows the distributor, distributor marketing area, total light oil gallons and the Cost Center which supplies the distributor's marketing area.

Schedule 1
Distributor Marketing Area
* Denotes 8 Month Sales Volumes
Prior to BP Ownership

Donna Oil Company Hicksville, N. Y.	9 Mos Total Light Oil Volume	Service Cost Center
*Hicksville	1,075,534	Great Neck
West Bady	8,388	L.I.C.
Huntington Station	2,500	Great Neck
Oceanside	5,700	Great Neck
Freeport	1,900	Great Neck
Brooklyn	—	L.I.C.
Total	1,094,022	

(Schedule 1, Con't)

M. Spiegel & Sons
Lynbrook, N. Y.

Brooklyn	155,788	L.I.C.
Staten Island	134,813	L.I.C.
Bronx	19,900	Mt. Vernon
*Lynbrook	14,345,800	Great Neck
W. Amityville	503,440	Great Neck
New York City	3,300	L.I.C.
Ramapo	73,150	Little Ferry, N. J.
Holtsville	23,480	Setauket
Wyandanch	313,338	Setauket
Hewlett	11,632	Mt. Vernon
Fairview, N. J.	20,641	Little Ferry, N. J.
Spring Valley	27,908	Little Ferry, N. J.
Hillburn	6,550	Little Ferry, N. J.
Piermont	4,800	Little Ferry, N. J.
Whitestone	20,400	L.I.C.
Flushing	14,100	L.I.C.
Corona	14,688	L.I.C.
Long Island City	6,000	L.I.C.
Glendale	1,200	L.I.C.
Valley Stream	62,940	Great Neck
Huntington	2,000	Great Neck
Massapequa	—	Great Neck
Elmont	3,000	Great Neck
Williston Park	1,900	Great Neck
Huntington Station	3,500	Great Neck
Cedarhurst	5,400	Great Neck
East Meadow	5,500	Great Neck
West Islip	16,000	Setauket
Deer Park	2,000	Setauket
Brentwood	6,000	Setauket
Islip Terrace	—	Setauket
Bohemia	25,200	Setauket
Yaphank	3,000	Setauket
West Babylon	3,500	Setauket
Mastic Beach	10,000	Setauket

(Schedule 1, Con't)

Mt. Sinai	2,000	Setauket
Stony Brook	21,900	Setauket
Kings Park	2,000	Setauket
Total	15,876,768	

Park Stations Inc.
New Rochelle N. Y.

Brooklyn	65,307	L.I.C.
Yonkers	117,878	Mt. Vernon
Mt. Vernon	56,919	Mt. Vernon
Bronx	242,805	Mt. Vernon
*New Rochelle	5,303,046	Mt. Vernon
White Plains	65,000	Mt. Vernon
Port Chester	11,004	Mt. Vernon
Tarrytown	—	Mt. Vernon
Ozone Park	26,267	L.I.C.
Jamaica	29,873	L.I.C.
Larchmont	24,450	Mt. Vernon
Elmsford	10,200	Mt. Vernon
No. Pelham	1,800	Mt. Vernon
Greenburgh	33,170	Mt. Vernon
Mamaroneck	31,100	Mt. Vernon
Hartsdale	7,400	Mt. Vernon
Total	6,026,279	

Wesco Petroleum Co., Inc.
Port Chester, N. Y.

*Port Chester	469,521	Mt. Vernon
No. Tarrytown	8,500	Mt. Vernon
Mt. Vernon	25,700	Mt. Vernon
Peekskill	16,900	Mt. Vernon
Total	520,621	

(Schedule 1, Con't)

Wisser Oil Company
Westbury, N. Y.

* Westbury	971,176	Great Neck
Huntington	10,900	Great Neck
No. Bellmore	8,800	Great Neck
Rockville Center	1,000	Great Neck
Commack	16,600	Setauket
Seaford Harbor	1,000	Great Neck
Bright Waters	1,100	Great Neck
Elwood	8,500	Great Neck
Total	1,014,076	

Volume by Cost Center

Schedule 2, shows the total distributor 9 month 1969 light oil volume distribution by Cost Center. Schedule 2, also, shows that two Cost Centers, Great Neck and Mt. Vernon, are the principle supply points for the metro distributors.

Schedule 2
Volume by Cost Center

Cost Center	Distributor	Total Light Oil Gallons	% * To Total
Great Neck	Donna Oil	1,085,634	99
	Wisser Oil	987,876	97
	M. Spiegel & Sons	14,933,480	94
Mt. Vernon	Wesco	520,621	100
	Park Stations	5,904,772	98
	M. Spiegel & Sons	31,532	1
L.I.C.	Donna Oil	8,388	1
	Park Stations	121,507	2
	M. Spiegel & Sons	350,289	2
Setauket	Wisser Oil	26,200	3
	M. Spiegel & Sons	428,418	2
Little Ferry	M. Spiegel & Sons	133,049	1

* % of Distributors total Light Oil Gallons.

Volume Summary

Schedule 3, shows the actual 9 month and estimated full year 1959 volumes by distributor.

Schedule 3
Volumes by Distributor

Distributor	9 Month, 1959	Estimated Full Year 1959
Donna Oil	1,096,997	1,461,200
M. Spiegel & Sons	15,948,598	21,266,600
Park Stations	6,046,576	8,062,000
Wesco Oil	523,141	697,521
Wisser Oil	1,021,102	1,361,474
Total	24,636,608	32,844,995

Marketing Equipment

Schedule 4, shows, by distributor, marketing equipment furnished by SHOC. It is noted that the value to Sinclair value and revaluation may change the dollar amounts.

Schedule 4
Equipment by Distributor

Distributor	Pumps	Other	Total
Donna Oil	$ 11,263	$ 3,234	$ 14,497
M. Spiegel & Sons	166,262	187,490	353,752
Park Stations	103,063	82,398	185,461
Wesco Oil	5,200	4,444	9,644
Wisson Oil	21,186	20,725	41,911
Total	$ 305,974	$ 298,291	$ 605,265

ITLOP Expenditures

Schedule 5, shows, by distributor, ITLOP expenditures at distributor service stations. Not included are items coded as expense. These items are estimated and costed by the .10 cents per gallon "add-on" maintenance charge.

Schedule 5
ITLOP Expenditures by Distributor

Distributor	ITLOPs as of 11-6-69
Donna Oil	$ 0
M. Spiegel & Sons	53,628
Park Stations	18,554
Wesco Oil	6,773
Wisser Oil	10,486
Total	$ 89,441

Accounts Receivable

Schedule 6, shows, by distributor, the average outstanding accounts receivable balance owed by the metro distributors.

Schedule 6
Average Accounts Receivable

Distributor	9 Months, 1969 Average Receivable Balance
Donna Oil	$ 13,774
M. Spiegel & Sons	291,912
Park Stations	379,353
Wesco Oil	8,639
Wisser Oil	11,046
Total	$ 704,724

Marketing Loans

Schedule 7, shows a summary of the outstanding marketing loans owed by M. Spiegel & Sons and Park Stations Inc., as of October 31, 1969.

Schedule 7
Marketing Loans Outstanding

Loan Rate	M. Spiegel & Sons	Park Stations	Total
4-1/2%	$ 14,577.50	$ 19,018.14	$33,595.64
5%	159,146.80	49,[illegible].30	[illegible].10
5-1/4%	13,850.64	0	13,850.64
5-1/2%	744,730.86	257,727.70	1,002,[illegible].58
6%	231,730.13	0	231,730.13
6-1/2%	241,154.91	46,031.78	287,186.69
7%	290,240.52	0	290,240.52
8%	159,000.00	0	159,000.00
Total	$1,[illegible]	$ 372,[illegible]	$2,[illegible]

Profitability Analysis

Schedules 8 through 12 show a profitability analysis per each of the Metro New York Distributors. The analysis is based on estimated full year 1969 volumes, realizations, product and delivery costs.

Distributor	Page
Donna Oil	9
M. Spiegel & Sons	10
Park Stations Inc.	11
Wesco Oil	12
Wisser Oil	13

Schedule 8
Donna Oil Corporation
Metro New York Distributor

Profitability Analysis	9 Mos, 1969		Estimated Full Year, 1969	
Annual Gallons	1,095,907		1,461,209	
	$	¢	$.	¢
	30,380	2.77	40,475	2.77
Total Gross Profit			40,475	2.77
Less: Maintenance (Estimated)			3,653	.25
Depreciation (Memo)			886	.06
Total Direct Expense			4,539	.31
Net Annual Profit			35,936	2.46
Less: Federal Income Tax			17,249	1.18
After Tax Profit			18,687	1.28
Add: Depreciation			886	.06
Net Annual Cash Flow			19,573	1.34

Investment

Equipment	$14,497	.99	¢/Gal
Accounts Receivable	13,774	.94	¢/Gal
Total	$28,271	1.93	¢/Gal

Pay-out Period----------1.4 years

Schedule 9
M. Spiegel & Sons
Metropolitan York[illegible] Irrigator

Profitability Analysis	9 Mos, 1969		Estimated Full Year, 1969	
Annual Gallons	15,945,[illegible]		21,262,[illegible]	
	$	¢	$	¢
Gross Profit	407,275	2.55	542,195	2.55
Add: Marketing Loan Interest			68,791	.32
Total Gross Profit			610,[illegible]	2.87
Less: Maintenance (Estimated)			53,157	.25
Depreciation (Memo)			27,002	.13
Amortization (ITLOPs)			5,[illegible]	.02
Total Direct Expense			85,[illegible]	.40
Net Annual Profit			525,[illegible]	2.47
Less: Federal Income Tax			252,[illegible]	1.19
After Tax Profit			273,[illegible]	1.28
Add: Depreciation			27,002	.13
Amortization			5,[illegible]	.02
Marketing Loan Principal			155,[illegible]	.74
Net Annual Cash Flow			461,[illegible]	2.17

Investment

Equipment	$ 353,752	1.66	¢/Gal
ITLOPs	53,628	.25	¢/Gal
Accounts Receivable	291,912	1.40	¢/Gal
Marketing Loans	1,894,439	8.72	¢/Gal
Total	$ 2,[illegible]38,731	12.03	¢/Gal

Pay-out Period----------5.6 years

Schedule 10
Park Stations Inc.
Metro New York Distributor

Profitability Analysis	9 Mos 1969		Estimated Full Year, 1969	
Annual Gallons	6,046,576		8,062,099	
	$	¢	$	¢
Gross Profit	131,805	2.18	175,754	2.18
Add: Marketing Loan Interest			11,086	.13
Total Gross Profit			186,840	2.31
Less: Maintenance (Estimated)			20,155	.25
Depreciation (Memo)			13,393	.17
Amortization (ITLOPs)			1,855	.02
Total Direct Expense			35,403	.44
Net Annual Profit			151,437	1.87
Less: Federal Income Tax			72,690	.88
After Tax Profit			78,747	.99
Add: Depreciation			13,393	.17
Amortization			1,855	.02
Marketing Loan Principal			46,502	.56
Net Annual Cash Flow			140,497	1.74

Investment

Equipment	$ 185,461	2.50	¢/Gal
ITLOPs	18,554	.23	¢/Gal
Accounts Receivable	379,353	4.71	¢/Gal
Marketing Loans	372,015	4.61	¢/Gal
Total	$ 955,383	11.85	¢/Gal

Pay-out Period----------6.8 years

Schedule 11
Wesco Petroleum Co., Inc.
Metro N.Y. York Distributor

Profitability Analysis	9 Mos, 1[illegible]	Estimated Full Year, 19[illegible]
Annual Gallons	523,141	697,521
	$ ¢	$ ¢
	12,800 2.45	17,089 2.45
Total Gross Profit		17,089 2.45
Less: Maintenance (Estimated)		1,744 .25
Depreciation (Mains)		704 .10
Amortization (ITLOPS)		677 .10
Total Direct Expense		3,125 .45
Net Annual Profit		13,964 2.00
Less: Federal Income Tax		6,703 .96
After Tax Profit		7,261 1.04
Add: Depreciation		704 .10
Amortization		677 .10
Net Annual Cash Flow		8,642 1.24

Investment			
Equipment	$ 9,644	1.38	¢/Gal
ITLOPs	6,773	.97	¢/Gal
Accounts Receivable	8,639	1.24	¢/Gal
Total	$ 25,056	3.59	¢/Gal

Pay-Out Period----------2.9 Years

Schedule 12
Wisser Oil Company
Metro New York Distributors

Profitability Analysis	9 Mos. 1969		Estimated Full Year 1969	
Annual Gallons	1,021,108		1,361,474	
	$	¢	$	¢
	27,717	2.71	36,896	2.71
Total Gross Profit			36,896	2.71
Less: Maintenance (Estimated)			3,404	.25
Depreciation (Memo)			3,132	.23
Amortization (ITLOPs)			1,049	.08
Total Direct Expense			7,585	.56
Net Annual Profit			29,311	2.15
Less: Federal Income Tax			14,069	1.03
After Tax Profit			15,242	1.12
Add: Depreciation			3,132	.23
Amortization			1,049	.08
Net Annual Cash Flow			19,423	1.43

Investment			
Equipment	$ 41,911	3.08	¢/Gal
ITLOPs	10,486	.77	¢/Gal
Accounts Receivable	11,046	.81	¢/Gal
Total	$ 63,443	4.66	

Pay-out Period----------3.3 Years

Summary of the Analysis

Based on the data shown in the analysis and on the additional data of the gross profit and loss statements contained in the Appendix of the Analysis, the following schedule 13 shows a comparison of the data developed in the analysis and shown in the preceding Schedule 1 through 12.

Schedule 13
Operations Comparison

Operating Results		Donna Oil	Spindel & Sons	Fox Stations	Wilcox Oil	Wilcox Oil
				DIFFERENCE		
Annual M. Gal.		1,461.2	21,262.6	8,002.1	697.5	1,361.5
Gross Profit	M$	40.5	542.2	175.8	17.1	36.9
Other Inc.	M$	--	68.8	11.1	--	--
Net Gross Profit	M$	40.5	611.0	186.9	17.1	36.9
Gross Profit	¢	2.77	2.55	2.18	2.45	2.71
Other Inc.	¢	--	.32	.13	--	--
Net Gross Profit	¢	2.77	2.87	2.31	2.45	2.71
Direct Expense	¢	.31	.40	.44	.45	.56
Net Profit	¢	2.46	2.47	1.87	2.00	2.15
Cash Flow	¢	1.34	2.17	1.74	1.24	1.43
Equipment	¢	.99	1.66	2.30	1.38	3.08
ITLOPs	¢	--	.25	.23	.97	.77
Acc. Rec.	¢	.94	1.40	4.71	1.24	.81
Loans	¢	--	8.72	4.61	--	--
Net Invest.	¢	1.93	12.03	11.85	3.59	4.66
Pay-out Years	¢	1.4	5.6	6.8	2.9	3.3

APPENDIX

ESTIMATED PROFIT (LOSS) STATEMENT

M. Spiegel & Son

Gross Profit by Cost Center (Page 1)

Months 1969

PREPARED BY | DATE

PRODUCT	SALES		¢ PER GALLON				GROSS PROFIT	
			DEDUCT		NET BACK	SBZ XXXX		
Great Neck	GALLONS	P/G	FRT. ETC.	DISTR. MARGIN			P/G	$
Regular	9,218,334	14.62	1.41		13.21	11.32	1.89	174,276
Super	5,385,664	17.62	1.41		16.21	12.82	3.39	190,472
Solvents	385	25.45	-		-	-	10.00	39
Kerosene	165	12.42	1.41		11.01	10.25	.76	1
No. 2 Fuel	321,321	10.71	1.41		9.30	9.90	(.60)	(1,928)
Diesel Fuel	71,372	10.39	1.41		8.98	9.90	(.92)	(657)
Residual Fuel	16,289	4.57	-			-	-	-
L.I.C.								
Regular	176,496	15.55	1.88		13.67	11.32	2.35	4,148
Super	171,426	18.88	1.96		16.92	12.82	4.10	7,029
Solvents	55	30.00	-		-	-	10.00	6
Diesel	2,300	11.54	1.90		9.64	9.90	(.26)	(6)
LIGHT OIL TOTAL	15,383,769						2.44	373,330
LUBES & MISC.	70,198						20.00	1,404
TOTAL SALES GALLONS	15,946,965	* See Note					2.55	405,279
TBA SALES VALUE $	2,789	@ 50%					-	1,395
						TOTAL ESTIMATED GROSS PROFIT	2.55	407,275

Note: Includes Little Ferry; Mt. Vernon; Setauket.

A79

ESTIMATED PROFIT (LOSS) STATEMENT SR(B-2102-I

M. Spiegel & Son (Page 2)

PREPARED BY: DATE

PRODUCT	SALES		¢ PER GALLON				GROSS PROFIT	
			DEDUCT		NET BACK	RACK XXXX		
Little Ferry	GALLONS	P/G	FRT. ETC.	DISTR. MARGIN			P/G	$
Regular	80,474	15.11	.81		14.30	11.32	2.98	2,398
Super	46,575	18.27	.81		17.46	12.82	4.64	2,161
Diesel	6,000	11.50	.81		10.69	9.90	.79	47
Mt. Vernon								
Regular	16,487	15.56	2.00		13.56	11.32	2.24	369
Super	14,545	18.80	2.00		16.80	12.82	3.98	579
Diesel	500	11.60	2.00		9.60	9.90	(.30)	(2)
Setauket								
Regular	284,135	15.21	1.36		13.85	11.32	2.53	7,189
Super	133,900	18.47	1.36		17.11	12.82	4.29	5,744
Diesel	10,383	11.50	1.36		10.14	9.90	.24	25
LIGHT OIL TOTAL	592,999						3.12	18,510
LUBES & MISC.								
TOTAL SALES GALLONS								
TBA SALES VALUE $								
					TOTAL ESTIMATED GROSS PROFIT			
LESS MARKETING EXPENSE:								

A 80

ESTIMATED PROFIT (LOSS) STATEMENT SEC 81021

Donna Oil

Gross Profit by Cost Center

9 Months 1969

PREPARED BY: DATE

PRODUCT	SALES		¢ PER GALLON				GROSS PROFIT	
			DEDUCT		NET BACK	XXX XXXX		
Great Neck	GALLONS	P/G	FRT. ETC.	DIST'R MAR'N			P/G	$
Regular	691,364	14.82	1.41		13.41	11.32	2.09	14,302
Super	401,558	13.67	1.41		12.26	12.62	3.64	15,412
LTC								
Regular	3,830	15.48	1.88		13.60	11.32	2.28	88
Super	4,550	18.77	1.88		16.89	12.82	4.07	185
LIGHT OIL TOTAL	1,094,022						2.74	29,987
LUBES & MISC.	1,885						20.00	377
TOTAL SALES GALLONS	1,095,907						2.77	30,364
TBA SALES VALUE $	32	@ 50¢					-	16
					TOTAL ESTIMATED GROSS PROFIT		2.77	30,380

Less MARKETING EXPENSE

ESTIMATED PROFIT (LOSS) STATEMENT SRC-3103-1

Wisser Oil

Gross Profit by Cost Center

Months 1969

PREPARED BY: | DATE

PRODUCT	SALES		¢ PER GALLON				GROSS PROFIT	
			DEDUCT		NET BACK	XXX XXXX		
	GALLONS	P/G	FRT. ETC.	DISTR. MARGIN			P/G	$
Great Neck								
Regular	716,719	14.83	1.41		13.42	11.32	2.10	15,051
Super	271,047	18.08	1.41		16.67	12.82	3.85	10,435
Solvents	110	28.18	-	-	-	-	10.00	11
Setauket								
Regular	19,200	15.26	1.36		13.90	11.32	2.58	495
Super	7,000	18.51	1.36		17.15	12.82	4.33	303
LIGHT OIL TOTAL	1,014,076						2.59	26,295
LUBES & MISC.	7,032						20.00	1,406
TOTAL SALES GALLONS	1,021,108						2.71	27,701
FBA SALES VALUE $	32	@ 50%					-	16
			TOTAL ESTIMATED GROSS PROFIT				2.71	27,717
LESS MARKETING EXPENSE:								

ESTIMATED PROFIT (LOSS) STATEMENT (PRO-FORMA)

Wesco Oil

Gross Profit by Cost Center

Months 1969

PREPARED BY | DATE

PRODUCT	SALES		¢ PER GALLON			GROSS PROFIT	
			DEDUCTIONS				
Mt. Vernon	GALLONS	P/G	FRT. & ETC.	NET BACK	TAX (PER GAL.)	P/G	$
Regular	247,460	14.7%	2.00	12.78	11.32	1.46	3,613
Super	273,161	17.1%	2.00	15.99	13.82	3.17	8,659
LIGHT OIL TOTAL	520,621					2.36	12,272
LUBES & MISC.	2,520					20.00	504
TOTAL SALES GALLONS	523,141					.44	12,776
TBA SALES VALUE $	47		@ 50%			.01	24
					TOTAL ESTIMATED GROSS PROFIT	2.45	12,800

COST MARKET NOT EXCLUDED

A83

ESTIMATED PROFIT (LOSS) STATEMENT SEC-3102-1

Park Stations

Gross Profit by Cost Center

Months 1969

* Estimated Regular Gross Profit

PREPARED BY: DATE

PRODUCT	SALES		¢ PER GALLON				GROSS PROFIT	
			DEDUCT					
	GALLONS	P/G	FRT. ETC.	DISTR. MARGIN	NET BACK	[illegible]	P/G	$
Mt. Vernon								
Regular	3,525,106	14.55	2.00		12.55	11.32	1.23	43,359*
Super	2,324,475	17.99	2.00		15.99	12.82	3.17	73,686
Solvents	55	21.82	-		-	-	10.00	6
Kerosene	955	12.36	2.00		10.36	10.25	.11	1
No. 2 Fuel	45,400	10.13	2.00		8.13	9.90	(1.77)	(804)
Diesel Fuel	6,500	14.51	2.00		12.51	9.90	2.61	170
Residual Fuel	2,281	12.67	-		-	12.67	-	-
LIC								
Regular	75,103	15.55	1.88		13.67	11.32	2.35	1,765
Super	46,404	18.80	1.88		16.92	12.82	4.10	1,903
LIGHT OIL TOTAL	6,026,279						1.99	120,086
LUBES & MISC.	20,297						20.00	4,059
TOTAL SALES GALLONS	6,046,576						2.05	124,145
TBA SALES VALUE $	1,532	@ 50%					.13	7,660
					TOTAL ESTIMATED GROSS PROFIT		2.18	131,805

LESS MARKETING EXPENSE:

BP Oil Corporation 7 Executive Park Drive, N.E., Atlanta, Georgia 30329 Phone (404) 633-2551

Robert G. Griffin
Vice-President, Marketing

November 10, 1970

Mr. Murray Spiegel, President
M. Spiegel and Sons Oil Corporation
P. O. Box 5
Hewlett, New York 11557

Dear Murray:

I have been delayed in answering your letter of October 21 due to my being away from the office. I am pleased, however, to have an opportunity to reply to your concerns regarding BP's marketing loan policy.

We have now established a completely new marketing loan procedure involving loan guarantees, direct marketing loans, and lease and lease-back provisions which, in our opinion, more adequately give the support needed to our distributor organization. It is true that, for the last few months, we have had to curtail this type of support until the monies were available and the policy formulated. However, our new policy will be in effect for the year 1971 so as to enable distributors to expand their retail marketing chain at prime locations.

As to the penultimate paragraph of your letter, it is my understanding Mr. Hagwood informed you in September that we would be agreeable to transferring an existing marketing loan to a new location at the existing interest rate. Upon investigation, however, I now find that this has not been consummated due to condemnation proceedings not being finalized and the lack of necessary documentation relating to the new property. Mr. R. R. Herrmann is aware of this approval and is waiting for the matters mentioned above to be closed so the transfer of loan can be made.

I can assure you that we are desirous of supporting our distributors in marketing activities that are mutually beneficial.

Very truly yours,

BP OIL CORPORATION

R. G. Griffin
Vice-President, Marketing

RGG/cj

Ex. F

A85

MORTGAGE NOTE

$59,000.00

New York, N.Y.
October 31, 1969

FOR VALUE RECEIVED, the undersigned, M. SPIEGEL & SONS OIL CORP., a domestic corporation having a business office at 40 Atlantic Avenue, Lynbrook, New York, hereinafter referred to as "Maker", hereby promises to pay to BP OIL CORPORATION, hereinafter referred to as "Payee" or order, at its office at 7 Executive Park Drive, N.E., Atlanta, Georgia 30329, or at such other place as may be designated in writing by the holder of this note, the principal sum of FIFTY-NINE THOUSAND DOLLARS ($59,000.00) with interest thereon to be computed from the date hereof, which said principal and interest at the rate of eight percent (8%) per annum shall be payable in monthly installments as follows:

> $563.83 on the first day of December, 1969, and like sums of $563.83 on the first day of each month thereafter in each year, without demand being made therefor, until a total of 180 successive monthly installments have been paid.

Said constant monthly payments shall be applied first to the payment of interest at the rate of eight percent (8%) per annum, computed from the first day of the calendar month next preceding the month in which the first installment is payable, as hereinabove provided, and the balance in reduction of principal. Interest alone on said principal sum, at the rate of eight percent (8%) per annum, computed from the date hereof to November 1, 1969, shall be paid at the office of payee as aforesaid on December 1, 1969.

The whole of the principal sum secured by this note shall forthwith or thereafter at the option of the holder of this note become due and payable if default be made in any payment under this note, or upon the happening of any default which by the terms of the mortgage given to secure this note and collateral hereto shall entitle the mortgagee to declare the same to be due and payable; and all of the covenants, agreements, terms and conditions of said mortgage are hereby incorporated herein with the same force and effect as if herein set forth at length.

IT IS HEREBY EXPRESSLY AGREED that the said principal sum secured by this note shall become immediately due at the option of the holder hereof, together with accrued interest, upon the discontinuance by M. Spiegel & Sons Oil Corp. of the sale and/or delivery of BP gasoline and other BP refined petroleum products to the said mortgaged premises hereinafter described.

IT IS HEREBY FURTHER EXPRESSLY AGREED that the said principal sum secured by this note shall become immediately due at the option of the holder hereof, together with accrued interest, if the Distributor Agreement now in effect between M. Spiegel & Sons Oil Corp. and BP Oil Corporation, or any renewal, extension or substitute thereof, is terminated at any time for any cause by M. Spiegel & Sons Oil Corp. or BP Oil Corporation.

G

Maker herein has the privilege of paying the whole or any part of said principal sum on any installment date by giving thirty (30) days' prior written notice.

Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived by the undersigned, and any and all others who may at any time become liable for the payment of all or any part of this obligation.

The whole of said principal sum and any unpaid interest shall become due and payable if maker shall be adjudged bankrupt or insolvent or shall make an assignment for the benefit of creditors.

This note is secured by a mortgage made by Maker to the Payee of even date herewith on property situate at Lot 5-A Block 409 N.J. State Highway Route 35, Middletown Township, Monmouth County, N. J.

This note may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

SIGNED AND SEALED THIS 31st day of October 1969.

ATTEST:

M. SPIEGEL & SONS OIL CORP.

_____
Secretary

By:_____
President

STATE OF NEW YORK)
(ss:
COUNTY OF NEW YORK)

On this 31st day of October, 1969, before me personally came Murray Spiegel, to me known, who being by me duly sworn did depose and say that he resides at
that he is the President of M. SPIEGEL & SONS OIL CORP., and the corporation described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

My Commission Expires:

_____

_____
Notary Public

BP Oil Corporation 7 Executive Park Drive, N.E., Atlanta, Georgia 30329

June 9, 1972

M. Spiegel & Sons Oil Corporation
46 Atlantic Avenue
Lynbrook, New York

Gentlemen:

Under date of June 7, 1972 (erroneously stated as May 7, 1972), I advised you that BP Oil Corporation's application, filed October 29, 1971, for a variance pursuant to Sections 1403.2-13.11 and 1403.2-13.12, of the New York City Air Pollution Control Code, had been denied, and that the application, filed on March 27, 1972, was still pending on June 7.

We have this date received the decision of the Administrator for the Environmental Protection Administration of the Cit, of New York denying the petition filed on March 27, 1972, but granting a temporary variance until July 1, 1972.

This letter is for the purpose of reiterating to you that under paragraph 5 of the Sales Contract now in effect, dated July 1, 1964, as amended from time to time, BP Oil Corporation is no longer obligated to furnish its BP Regular and BP Super Gasolines in the five boroughs comprising New York City subsequent to June 30, 1972. It is our intention to make available to you for supply our BP Regular and BP Super Gasolines until the close of business on June 30, 1972, after which time we will be prohibited by law from making further deliveries of these products within the five boroughs.

We will expect to pick up the BP credit card imprinters and the BP identification signs identifying the various service stations now supplied to you by us within the City of New York immediately after June 30, and will bill you for the marketing equipment owned by BP and located at the various service stations within the five boroughs.

The marketing loans which we have with you and which are secured by mortgages on service stations within the five boroughs of New York City provide that they shall become due and payable in full in the event BP branded gasoline is no longer sold at said stations. We shall expect an early liquidation of these Notes.

We regret that the action of the City of New York has made it impossible for us to comply with our Sales Contract with you. We will, of course, continue to supply BP Regular and BP Super Gasolines to you at those service stations presently supplied by us which are at locations outside of the City of New York.

Very truly yours,

BP OIL CORPORATION

L. G. JOHNSON
General Manager, Marketing

A89

BP Oil Corporation 7 Executive Park Drive, N.E., Atlanta, Georgia 30329 Phone (404) 633-2951

Charles H. King
Vice-President, Marketing

July 11, 1973

M. Spiegel & Sons Oil Co.
46 Atlantic Avenue
Lynbrook, New York 11...

Gentlemen:

Your Company and BP Oil Corporation are presently engaged in litigation in the U.S. District Court for the District of New Jersey, at Newark, in the U.S. District Court for the Southern District of New York, in New York City, in the Supreme Court of the State of New York for the County of Suffolk and for the County of Nassau. We have discussed today the settlement of all of these lawsuits, together with all other claims which either of us might have against the other as of this date, with the exception of accounting for previous deliveries of product and payment therefor, including the use of credit card tickets in said payment, and we have come to an agreement. The following are the terms of this agreement and will be embodied in a general release and in necessary stipulations which will be prepared by counsel for both parties:

1. You have agreed to borrow the necessary funds with which to pay off as soon as possible the marketing loans approximating $400,000.00, secured by mortgages on eleven service stations, four of which are being foreclosed in Nassau County and seven of which are being foreclosed in Suffolk County. You have agreed that you will furnish a commitment letter from a responsible lender by July 16, 1973, committing the lender to make the above loan in the ordinary course of business and without undue delay. Upon receipt of payment of these notes evidencing the marketing loans, BP will deliver to you properly executed satisfactions of said mortgages and will forthwith dismiss all foreclosure proceedings.

2. You are indebted to BP in an additional amount approximating $1,100,000.00 represented by notes and mortgages. In consideration of this settlement and the mutual agreements undertaken by each of the parties, BP will not now exercise its options to accelerate said loans but will continue said loans on an installment basis at an aggregate interest rate of 7-1/2% per annum from July 1, 1973 until June 30, 1974, at which time it is agreed that the full amount of the then balance of principal and interest at

J

said rate will then become due and payable. You agree that you will continue making regular monthly payments of principal with interest at the above rate.

3. BP agrees, commencing July 12, 1973, that it will sell to you, and such other of your affiliated companies as you shall direct, unbranded gasoline, being BP's "motor grade gasoline" and "Special premium gasoline" to be picked up by you at BP's terminals at Setauket, Oceanside and Tremley Point, the amount to be allocated by BP at the same percentage that it allocates its branded distributors, and on an aggregate annual volume of 18,000,000 gallons, and with a minimum of 13,000,000 and maximum of 18,000,000. The price to be paid by you shall be BP's prevailing rack price for said products at said points of delivery. It is understood that no terms of this contract with respect to prices shall require purchaser to pay a price higher than that encompassed by the present petroleum price freeze unless permitted by future Federal price regulations. In the absence of such regulations, the price clause of this contract (the prevailing rack price) shall apply. This agreement to sell and buy shall terminate at the close of business on June 30, 1974.

4. We agree to sell and you agree to buy all of the installed marketing equipment presently owned by BP and installed at the service stations to be supplied by you with product purchased from BP at the appraised value of said marketing equipment to be set by an independent appraiser selected by the parties. The parties agree to make their selections as soon as practicable and proceed with dispatch.

5. You agree that BP's identification signs and credit card imprinters will be delivered to us without delay.

6. By your assent to this letter, you do hereby release BP from any and all claims which you might have or assert as of this date against BP (except accounting for product delivered and payments made therefor) including, without limitation, any claims of an anti-trust nature or for breach of contract alleged in connection with BP's pull-out of New York City in July, 1972. Counsel will prepare stipulations of general release and of dismissal, at Plaintiffs' costs, of all pending litigation between the parties.

If this letter correctly sets forth the terms of our agreement, please indicate your assent thereto by signing a copy of this

letter in the space indicated below.

Yours very truly,

BP OIL CORPORATION

Chas. H. King
Vice President

Accepted and agreed to
this 11th day of July, 1973

M. SPIEGEL & SONS OIL CORP.

BY

Richard L. Spiegel
Secretary-Treasurer

NEWSDAY, THURSDAY, MAY 4 '73

BP to Prime Pump, Cut LI Repairs

By Jim Smith

BP Oil Inc. wants to replace 17 of its 57 full-service gas stations on Long Island with stations where customers could get only gas and oil—not repairs, a company official said yesterday.

The firm sought permission yesterday from the North Hempstead Town Board of Zoning and Appeals to demolish BP stations in Garden City Park, Greenvale and Carle Place and erect streamlined "gas and go" stations in their place. The board reserved decision. On Tuesday, BP had requested similar permission from the Oyster Bay Town Board to convert stations in Hicksville and Syosset.

BP's metropolitan sales manager, James Timmons, who testified before the North Hempstead zoning board, said he hoped that conversion of some of the 17 stations could begin this fall.

Timmons' statement comes just one week after Nassau County's energy coordinator, Francis E. O'Connor, reported to the New York State Energy Office that BP marketing changes are driving the firm's independent dealers out of business. The company backs no policy on repairs, only on sales of gas and oil, and O'Connor accused BP of using several tactics to drive the full-service operators out of business so they could be replaced with "gas-and-go" stations:

- Raising prices on regular gasoline an average of six cents over all other brands.
- Canceling credit cards held by customers.
- Requiring operators to pay cash on delivery for all gasoline.
- Issuing only short term leases.
- Pressuring operators to stock large quantities of BP products.

A spokesman for BP, reached in Cleveland, said that BP is losing $50,000,000 a year, and "decided to do something about it by going to the 'gas-and-go' approach in key market areas." He said if BP prices are high, it is because almost all of BP's crude oil is imported from the Mideast, "which is the highest priced oil in the world right now."

The spokesman said BP had eliminated its own credit cards and now accepts only BankAmericard and Master Charge in order to save on costs. He said that requiring stations operators to pay cash for deliveries was also a cost saving measure. But he said he knew nothing of pressure to stock BP products and that short term leases are often given to allow operations that plan stations are to be converted to "gas-and-go."

In most cases, the spokesman said, the station manager would be given the chance to remain as manager of the "gas-and-go" station, but he would become a company employe and receive a commission on sales. But Jim Stack, 49, who has managed the J&J service station in Carle Place for five years, said the first he had heard of plans for his station to be converted was yesterday afternoon when a reporter called him.

"I've worked for myself for 30 years," he said. "I wouldn't go to work for them. I know most of the fellas won't have anything to do with it." Stack said his pump prices are 68.9 cents for premium gas and 64.9 for regular. "People won't touch it," he said. "I need 6 mechanics to service."

Joseph Fortuna, 63, manager of Fortuna's service center in Greenvale the last five years, said he had been told of plans to convert his station to "gas-and-go," and that he would remain as manager.

Timmons said that 19 "gas and go" stations in Hicksville sold 23,000,000 gallons of gas in 1973, roughly the same amount as 120 full service BP stations there did the previous year. He said the new stations are open 24 hours a day, seven days a week, and employ four to 15 persons each instead of about six under the old system.

HEARING BEFORE THE NORTH HEMPSTEAD ZONING BOARD

May 29, 1974

MR. CARRIERI: "Lastly, most importantly, we feel, is that the station will be run by the present dealer. The present dealer will become an employee of BP, and we feel that that's important because we want to be a good neighbor to this fine town.

If we have an employee running the station, managing the station, we will have direct control with respect to the station and we will have direct responsibility.

If there are any problems, BP will be responsible, and I can assure this board quick action will be taken." (p. 8)

THE CHAIRMAN: This is primarily a sales operation rather than an automobile service station? No repairs will be done on the property? (p. 9)

MR. CARRIERI: Yes.

The only thing we will do is dispense gasoline and replace oil products. This is not changing the oil, but just exchanging.

THE CHAIRMAN: Mr. Carrieri, the present owner of the service station specializes in snow removal during the winter. We assume that this operation will be discontinued? (p. 13)

MR. CARRIERI: Absolutely.

THE CHAIRMAN: No snow removal?

MR. CARRIERI: No snow removal, no trucks on the station, nothing.

MR. KRAEMER: Is that a condition on the lease?

MR. CARRIERI: This is our intention.

MR. KRAEMER: Will it be the same tenant who will continue to run it?

MR. CARRIERI: Well, the dealer who is now running it will become our employee and he will run it. (p. 14)

MR. KRAEMER: You will make it a condition of the lease?

MR. CARRIERI: Absolutely. We will make it a condition of the lease.

MR. TIMMONS: It is designed for the dispensing of gasoline and add-on motor oil only. It is intended to be a twenty-four hour operation. (p. 15)

* * *

THE CHAIRMAN: . . . As you say, you call it add-on motor oil. There will be no oil changing, just add-on?

495

A96

THE WITNESS: (Mr. Timmons)

That's right.

. . . We have oil to add on directly. There is no oil changing or greasing, lubrication, or any other service of that type. It is strictly dispensing of gas and add-on oil. It is company operated. The individual who is now a dealer will be our company manager and will work on a commission program based on the volume of gasoline.

It will be BP's responsibility to maintain that station, to see that it's operated properly and meets all aspects of the laws....

The station is designed for potential - under our proposal - for approximately 100,000 gallons a month. It now operates in the area of 23,000 gallons a month. We feel that we can gain by pricing the station at a comparable level to the other gasoline - only type stations within the area. (p. 16)

MR. CARRIERI: Let me stop you and ask you a question. If this application is granted, will the price to the consumer be less?

MR. TIMMONS: Yes, it will be less.

MR. CARRIERI: By how much?

MR. TIMMONS: Approximately three cents a gallon less.

MR. CARRIERI: For the record, Mr. Rain is employed by BP Oil, Inc.

* * *

MR. CARRIERI: Now, Mr. Rain, have you been involved in the construction of this type of gasoline station in other communities?

MR. RAIN: Yes, I have.

MR. CARRIERI: And have they been constructed?

MR. RAIN: Yes, in Philadelphia we have four and in Baltimore we are constructing sixteen right now.

THE CHAIRMAN: . . . I'm sure that you are doing this on a nationwide scale, but our concern, of course, is the Town of North Hempstead.

You are telling us, in effect, that these canopy structures are stressed for any eventuality that exists in this northeast area? (p. 18)

THE WITNESS: (Mr. Rain) Yes, anything that has developed in the past....

MR. CARRIERI: We hope that if this application is granted, if the demand requires, to service the community twenty-four hours. However, if the board feels it would not like twenty-four hours, ...we would suffice with eighteen hours, closing at eleven o'clock at night and opening about six o'clock in the morning. (p. 22)

MR. CARRIERI: The employee at the station will be the dealer who is presently there now. He will be the manager of the station, he will run the station, but BP will have both control and responsibility with respect to this station so that if there are any problems BP will solve it, attempt to solve it, because we want to be a good neighbor.

A97

THE CHAIRMAN:

...[T]here always appear to be some parking of cars going on the property at the present time. I think the owner of the service station is probably getting a rental for daily parking.

* * *

This, of course, if I understand correctly, would not be permitted? (p. 36)

MR. CARRIERI:

Absolutely not permitted.

MR. CARRIERI:

Again, this property will be maintained by BP. It will be run by a BP employee who happens to be the same individual who is a dealer there presently.

MR. KRAEMER:

All the present operations with the Volkswagon and so forth, will all be ceased? (p. 65)

MR. CARRIERI:

Will be ceased, exactly.

THE CHAIRMAN:

The operation will be the same at all three locations?

MR. CARRIERI:

Yes. Only dispensing of gas, no vending of any kind, add-on oil.

At all three stations the employee or the dealer presently there wishes to be the employee and in all three cases this has been negotiated and agreed upon.

Mr. Carrieri - Counsel to BP
Mr. Timmons - BP Retail Sales Manager
Mr. Rain - Chief Engineer for BP

UNITED STATES OF AMER
FEDERAL ENERGY OF

REMEDIAL ORDER

TO

STANDARD OIL COMPANY (OHIO), INC.

B.P. OIL, INC.

Standard Oil Co.
Midland Building
Cleveland, Ohio 44115

B.P. Oil Inc.
Midland Building
Cleveland, Ohio 44115

Dear Sirs:

Pursuant to 10 CFR Sec. 205.[illegible] FR 1928, January 15, 1974) the following findings on preliminary examination have been made of violations of the Emergency Petroleum Allocation Act and Regulations by the Standard Oil Company (Ohio), Inc. (hereinafter "Sohio") and B P Oil Inc. (hereinafter "BP"):

I. Improper supplier's allocation fraction

1. Sohio markets motor gasoline in the Eastern United States including PAD Region II through its wholly owned subsidiary, B P, under the brand name B P.

N

Ohio markets gasoline in Ohio under the brand name of Sohio, and in surrounding states through its Boron subsidiary, under the brand name of Boron.

2. Sohio contracts to purchase all of the crude petroleum ultimately marketed through its marketing subsidiaries, including B P.

3. Decisions as to how much of the crude petroleum purchased or contracted for by Sohio will, after refining, be distributed under the B P name to B P base period customers, and how much under the Sohio and Boron names to Sohio and Boron base period customers are made by the same corporate officers and individuals in Sohio offices in Cleveland, Ohio.

4. Pursuant to 10 CFR Part 211 Sohio, as a supplier, is required to use the same suppliers' allocation fraction for all of its customers and is required to prov troleum products to each of its customers based on the multiplication of the customer's adjusted base period volume by the same supplier's allocation fraction.

5. In January 1974 Sohio decided to report and did report to the Federal Energy Office a supplier' allocation fraction of 70% for its marketing operations

under the names of Sohio and Boron while deciding to report and reporting only a 54% supplier's allocation fraction for its marketing operations under the name of B P.

6. In February and March, 1974, Sohio decided to report and reported to the Federal Energy Office a supplier's allocation fraction of 82% for its marketing operations under the names of Sohio and Boron while deciding to report and reporting only a 70% supplier's allocation fraction for its marketing operations under the name of B P.

7. Sohio continues to use a substantially different and lower supplier's allocation fraction for its marketing operations under the name of B P than for its other marketing operations.

8. Sohio has distributed and continues to distribute gasoline to its customers in accordance with these different allocation fractions with the consequence that the provisions of 10 C.F.R. Part 211 have been circumvented, and that the base period customers of Sohio which purchased gasoline under the B P label have not received and are not receiving the amount of gasoline to which they are entitled by law

4

9. B P has in the past allowed and continues to allow Sohio to use a substantially different and lower supplier's allocation fraction for its marketing operations under the name of B P than for its other marketing operations.

II. Improper Supply to Non-Base Period Customers

10. Sohio and B P have supplied customers in 1974 who were not base-period customers, including substantial amount to Good Hope Refining, Inc. and Tenneco in violation of 10 CFR Part 211

III. Failure to Supply Base Period Customers

11. In addition to supplying customers in Region II on the basis of a separate and lower allocation fraction some base period customers received less motor gasoline than would have been proper even under the lower of the allocation fractions used and some base period customers received no motor gasoline, all in violation of the provisions of 10 C.F.R. Part 211.

IV. Accumulation of Excessive Inventories

12. Distribution of supplies to certain base period customers was planned for and included in Sohio's and B P's calculations, but never actually distributed, resulting in the accumulation of excessive inventories, in violation of 10 CFR Part 211.

Continuing Violations and Irreparable Damage

New York.

this.

[illegible]

[illegible]

[illegible]

a moment, your honor, I will explain the chronology of events.

The lawsuit was started in April, 1973, and at that time, the MSC economy had already been put out of gas and diesel [illegible] In fact, there was a lawsuit [illegible] and during April [illegible] and dependents were [illegible].

Now, during the course of this and we [illegible] Chipola's problem, [illegible] several times of action were all of them [illegible] action by Chipola [illegible] all of them [illegible] of gas, all of them [illegible] in what it was doing, and it was difficult to show [illegible] and Episcopal did not [illegible] fuel contracts and [illegible] and I think they [illegible] and now they [illegible] June 30, 1973, and [illegible] doesn't, and we [illegible] that BP is acting [illegible] equal, appropriate [illegible] have been [illegible] BP would cut off gas [illegible].

Pltf. Ex. O

A112

A-113

Spiegel-direct 35

A119

A124

A12.5

A134

A138

A245

A146

A147

A254

AAA255

A160

#161

A361

A165

Å166

Spiegel-cross

[illegible]

Q [illegible]

A Correct.

Q Your attorney signed a stipulation for discontinuance, [illegible] be held by counsel for [illegible] that's correct?

A I believe he did, for whatever [illegible] I am not aware.

Q You accepted the rent offset [illegible] a year's period; is that correct?

A I am [illegible]

Q You didn't do anything [illegible] arrangement until you filed this action [illegible] year; isn't that correct?

A We didn't do anything else.

Q With respect to the mortgage foreclosure [illegible] Jersey action was underway, what was [illegible] closure actions relate to?

A Those related to the stations that were [illegible] changed over to Amoco [illegible]

Q You had changed those over to Amoco and they had the Amoco signs on them?

A That's correct.

Q BP didn't foreclose on any of the stations

with the BP flag, did you?

A. On July first there were no BP flags. They pulled them all down.

Q. Now, I am fairly sure we've got this, I'm talking, about the time of the Jersey hearings and so forth, when the clerks were away. And when we spoke to you, you have told us -- they all wanted to have a uniform of Amoco, didn't they?

A. They wanted to standardize that were changed to Amoco, correct.

Q. You had not quit off your indebtedness to BP on March 31st?

A. I was getting my monthly payments as they come due.

Q. I'm not talking about the monthly payments. I am talking about -- you had a duty to pay BP certain at those stations, hadn't you?

A. That's because they told us they were no longer going to sell to us, and we had conference dates with the vice president of BP and Sohio, Mr. Griffin, who told us all of a sudden --

MR. D'AURIA: I object, you're not. I move to strike that.

MR. D'AURIA: I would suggest that the

A148

witness be permitted to answer.

MR. HANTZIS: I don't want his conversations with BP.

[illegible] Strike it out. Mr. Maurie can do it later on.

BY MR. HANTZIS:

Q You testified about the net worth of your company?

A Yes.

Q What is the net worth of your company?

A At the time --

Q Now, today, approximately.

A I haven't made a recent computation.

Q Give me an approximate figure.

A As of last year, we estimated the value at about 6.5 million. We feel it's depreciated considerably since then.

Q What would you say it is today?

A Probably around 4.5 million to 5 million.

THE WITNESS: Excuse me, Judge. By "net worth" net worth would mean after deducting the -- what is owed by the company?

THE COURT: That's right, assets over liabilities.

THE WITNESS: Then we have to take out of that --

A270
A172

Clet. Cont.

By Mr. Wagner:

Q [illegible]

By Mary Ellen:

Q I would say it [illegible] assets run [illegible] to $5 million, of which we owe about $3 million.

Q And $800,000 of that is to [illegible] $300,000.

A Yes.

Q How much to other institutions, did you mention $3 million?

A They are about $2 million.

Q What's the future on [illegible] debt?

A Roughly, that's close to $2 million. Then we have some --

Q Is that the $ million payable?

A Yes. Then we have some other monies that we owe to various --

Q Were those secured, or were they --

A No, some other loans that have been loaned by people who wanted to invest.

Q How much is that?

A About $300,000.

Reporter

Attorney for Plaintiffs

EXHIBIT A

A271

A173

Spiegel-Cross 96

Q That would [illegible] $2.1 million of debt?

A Something like that.

Q $4.5 million or $5 million, you say?

A $4.5 to $5 million.

Q $4.5 million to $5 million, no current [illegible] as written?

A Yes.

Q These stations that are currently the subject of the mortgages, the 20-some stations, are they profitable operations?

A Yes.

Q Do you own these stations?

A [illegible] on the mortgages we own, obviously.

Q Are they leased out?

A Correct.

Q All of them leased out on long-term, non-cancelable?

A Right.

Q As far as you know, they are operating profitably or not?

A We are making money on them, and as far as we know, the dealers must be. They keep their leases in force and are not looking to get out, except for the period when we had no gas for them.

Sincerely,

ROBERT S. MURPHY
For the Firm

RSM:fb

EXHIBIT B

A272

A174

Spiewak-direct 97

Q How about the collocation on those stations,

what does it run, approximately, more usually? I realize the

stations are different, but what do some present ones

A If you are asking me about the newer or

stations, I would say we are now operating at one

subject to the arithmetic, I guess, involved there numbers.

But it's a very interesting part of the allocation, because

the ones that are on the mortgages are some of the best

stations we have, and some of the newer ones.

So I would say that out of the 30 million

dollars that we put on the allocation, these 30 stations

would probably represent about [illegible]

say, then --

Q Two billion?

A I say, it's an approximation, though. I haven't

studied that matter.

Q These are 27 locations?

A As a number on the mortgages.

Q [illegible] total, are you talking about?

A The total number of stations that we have?

Q Yes.

A It's -- at the present time we are supplying

about 135.

Q This is 27 out of 135?

EMANUEL EARP

OFFICIAL COURT REPORTER

A273

A175

A Yes.

Q You say those 27, you estimate, may take 10 out of your 25 million gallons?

A That we get from CO. Now, of course, we get from other [illegible]

Q [illegible] and Mobil right?

A Wrong.

Q What?

A Wrong.

Q [illegible]

A I would say that between Exxon and Mobil, we [illegible] 14, 15 million [illegible]

Q 14, 15 [illegible]?

A I think so.

THE COURT: Your average stations themselves, less than half a million gallons a year, is that right?

THE WITNESS: Yes.

BY MR. HUNTZINGER:

Q You get supplies of gas from other [illegible], too, don't you?

A Yes, we do.

Q Approximately how much more than the [illegible]

A Well, we sell -- our base allocation -- the

1 34
2 53
3 51
4 60
5 63
6 130
7 130

A274

A177

A276

Spiegel-cross 101

MR. D'AURIA: There are a bundle of papers.

MR. PARTRIDGE: We do have papers which we are prepared to submit, and I was going to request, and will when Mr. D'Auria is through, an opportunity

A None.

Q No others?

A As far as I know, we have no stations

mortgaged to any oil companies other than Mo... And every

property we own is part of a security agreement of some

sort or other.

Q Since July '72, when this new Torrey agreement

was signed, you have been in the process, have you, of

selling off certain stations?

A Correct.

Q How many have you sold, approximately?

A I think we actually had closings on three, or

possibly four. Three or four.

Q How many do you have plans for disposing of

now?

A At the present time, it looks like we may have

sales for an additional three, I believe.

Q Any about the others?

A We haven't got ready buyers for them yet.

Q Have you made efforts to sell them?

A Yes.

Q Do you have them out on the market actively

pursuing buyers?

A We have had them with the buyers. We have

government lawyers, who submit no opposing affidavits. The

acknowledgment of service is on that particular

copy, which is the original.

The second, your Honor, is an affidavit of

R. L. Arnwine.

The third is a very brief additional affidavit

A278

A 198

circulated some proposed form of lease for sales

[illegible] of vehicles.

[illegible]

[illegible]

[illegible]

A No, not in three or four. But we have in one case, that's true, and one that is for sale now, that is true, and another tenant is buying one of them. So it's available to them in preference to everybody else.

It's a matter of finagling. I can't sell anybody and have a negative cash flow or if I'm not or words. I can't [illegible] sell it and have the same name to do it. I am not in a position to throw in a way to sell a piece of property.

Q It is a fact, isn't it, Mr. Spiegel, it is not a [illegible] you sell off [illegible] supply [illegible]

A [illegible] station, because we must run a tank wagon to [illegible] gasoline, and it is not [illegible]

Q As I understand it, you supply [illegible] supply him even though the [illegible]

A By [illegible]

(Discussion off the record.)

Q That's under the FLA Program?

A Yes.

Q So the fact is if you could sell off these stations, pay off your mortgages to BP or refinance it somewhere else and pay off your mortgage to BP, the station would still continue in operation if it were purchased by a dealer?

A Yes.

Q There would be no loss of gas, no decrease in gas supply to you from BP?

A Correct.

Q And the gas station would keep going?

A Correct.

I have been working very hard to that end, but with the very minor success that I have reported.

Q Now, have you made any other efforts to obtain funds to meet your indebtedness to BP?

A Yes, sir.

Q Apart from selling off the various stations to dealers?

A Yes.

Q What other efforts have you made?

MR. D'AURIA: I object.

THE COURT: It goes into hardship.

MR. D'AURIA: I object to the characterization --

delivery cost and Sinclair's trucks and Sinclair's storage facilities and even sometimes the delivery Sinclair truck would handle the documentation on the billing, although the act --

THE COURT: Like the old practice in the coal business, where you pay so many cents per ton for somebody giving you coal business; is that right?

A177

MR. HARTZELL: Well, I don't know about the

THE COURT: Except to the extent that it may involve some confidential pending deals.

THE WITNESS: No.

Now, the unusual aspect of this was that

THE COURT: Let him answer.

Sinclair's general method of distribution included

THE WITNESS: I wish I had some confidential direct sales to gas stations and in outlying areas, pending deals, your Honor.

generally, they had what I call true distributorships

A We made application to numerous banks, including and those outlying area distributorships actually some recommended to us by Sohio. We spent money with mort- performed distributor functions, had investments and gage brokers to get us commitments and there are several so forth.

things that have prevented us from making any arrangements.

One other point on the Spiegel stations.

even under adverse circumstances.

Sinclair actually put into those situations

Number one, the brokers, these various financial or some of its own equipment, marketing equipment, I real estate investments trusts, you name it, have several imagine pumps and things like that, although I'm questions they want to know. They analyze the property and not an expert on the details.

they say the rents will not support the mortgages that you

That arrangement is the one we are really have now, let alone new mortgages at a much higher interest. talking about in the 1960's, that was renewed on

Q You mean the dealer rents?

three-year terms, the last renewal of which was

A Yes, the dealer rents we are receiving.

from 1970 to expire June 30, '73. Those dates become

In order to pay your mortgages, you require to sell a little bit significant. If we pause a moment now, the gasoline. You are talking to us about a five- or a seven- let's turn back to Sinclair.

or a ten-year mortgage. You have no way of telling us, no

Sinclair had substantial crude oil reserves of contract to show us that you are going to be able to sell its own. I am told -- a witness will tell you -- I gasoline through these outlets before that time. In fact, think maybe 60 percent of Sinclair's distribution was if anything, we know that you are being threatened with the from its own crude reserves. Sinclair in the late '60's, however, was acquired by Atlantic Richfield

termination of gasoline. So how in the world can we give you a mortgage on these properties when we can't anticipate that you have the means to repay them, and that's what happened.

Q Generally speaking, what percentage of the mortgage -- how much does the rent cover annually, the rent that you receive back, what's the difference between the rent you say wouldn't support the mortgage?

A Under the mortgage terms that we have at present the rents that we receive closely approximates the carrying costs of the mortgage. In other words, it would pay --

Q The interest?

A It would pay the interest plus the principal and plus a good portion of the taxes. Now, that's ideally what we look for and in many cases we have come close to it, but in many cases we are somewhat shorter.

Now, in a refinancing situation, the monthly payments are considerably greater than what they are under the original mortgage terms.

Q Depending on the interest rate and the length of the mortgage?

A That's correct.

MR. D'AURIA: Would Mr. Hartell permit the witness to complete his answers because he's interposing

further questions while Mr. Spiegel is in the midst of an answer.

THE COURT: I thought he had answered it.

Continue.

A Basically, in fact totally, I can say, the payments per location would be higher that we would have to make to the lending institution -- would be considerably higher than the rents that we receive. Furthermore, the lending people also realize that without a supply of gasoline, the rents will stop because the dealers, the tenants are renting from us a gasoline service station and implied in that is that we are going to have gasoline to sell to them or that they will be able to get gasoline.

Q As long as the -- Are you finished?

A Right.

Q Basically, on the average, what kind of of monthly payments are we talking about on one of these stations that currently sort of covers -- is covered by the rent? Give me an approximation.

A We vary all over the lot depending on the station that's 10 years old or one that we bought three years ago and the value of the property.

Q I realize it would vary. I am not trying to hold you to anything. Can you give me some idea?

A I think that certainly has a number of what you
of the majors, all of the majors are, and you are in a
better position to get it.

I don't know.

Q In the matter of volume do they will acquire
an image of good faith in order to get the Alaskan
pipeline [illegible] certificate for [illegible]
to [illegible] east coast [illegible] that's your
understanding, you can't say it [illegible]?

A I don't know. I don't know. As your Honor knows, that
Alaskan pipeline has been delayed by environmental
problems and so forth and it's at least, I suppose,
three years away now. So we have had a period here
of about [illegible] years, which includes this period from 1970-
'73 up to date, where Sohio, the parent of our present
DP, continued to be crude short, desperately crude
short. DP itself, the defendant here, has no crude
reserves and has to depend on outside purchases, and
it's a marketing organization which is good, but
normally payouts to DP was about $23,000 a month,
different from what it used to be as part of Sinclair
years ago.

Q Today it would be less?

A Sometime less, yes.
As a result of all this, these marketing

Q Maybe you reduced those a fair number, right?
arrangements -- and now we are coming down to the

A Well, we have --
Spiegel arrangement, particularly these Metro distri-

Q Maybe 10 or 15,000?
butorships -- got very close scrutiny beginning about

A We have reduced the number of stations. We
1971 to determine their profitability and they got
closer scrutiny because a large integrated company

A275
A127

reduced the payments to BP. But, if course, our monthly payments are probably still in the same order because we are making payments to Peninsula National Bank to offset. But when you get down to an individual one -- well, let's see. Last year on $20,000 a month we had 27 plus maybe another dozen rounded off to 13. You had 40. So it was an average 500 a month, right.

(Continued on next page.)

familiarity of the exact sequence, but sort of in general, that's the economic background that leads us up to 1970-'71, and in that period BP -- and I am now talking about our defendant -- decided to terminate these Metro distributorships because they were not sufficiently profitable operations. In fact, I think they were unprofitable, although the exact accounting on figuring that out is a little bit complicated and I am not qualified to say it precisely, and they determined to cease these distributorships as the terms of the five agreements expired, and they did so with each one. Spiegel was the last chronologically to expire in June '73.

The decision not to renew the Spiegel arrangement after June '73 was made in 1971, and verbally the Spiegels were told in November, about November '71, that a year and a half later BP did not intend to renew that arrangement. The costs of all this delivery and so forth had gone up and it just wasn't worthwhile

A286

EK/td
5/1

Q So you are 12, 14 thousand a month, currently?

A Yes.

Q And most of that is covered by the rents you receive from the dealers?

A Correct.

Q And if you refinance then, presumably the monthly carrying charges would be greater?

A Correct.

Q And if they were, say, fifty percent greater --

A Yes.

Q (Continuing) They would go up to $21,000 a month, if they are fourteen?

A On that part, you are correct.

Q I am just using round figures.

A Yes.

Q So that if everything were the same, except that it would cost you, cost Spiegel, if you were backing the difference, let us put it that way, you couldn't do anything else with it, it would be seven thousand dollars a month?

A Right.

Q Which is $98,000 a year -- well, pardon me -- although I think probably the major part, of the whole enterprise, but a very substantial part of his operations is not related to PP.

A Eighty four.

Q Eighty Four?

A Eighty four.

THE COURT: You say something in here about the mortgages being on 27 out of 155 stations. What's

A287

A189

Q Some of which is deductible as interest?

MR. D'AURIA: This is on the assumption that your view as to how many of the stations can sell mortgage money is available, and the witness has testified that it was not.

MR. MARTELLI: I just pause a moment to say, what I was just referring to before, it is not based on that, here is a very elaborate operation, and it is using our money chain, that is what it comes down to.

Well, I think I have developed the point.

THE COURT: All right.

Q At the beginning of the examination by Mr. D'Auria, he was speaking with you about the time when some of these mortgages were put into effect, and he asked you whether comparable arrangements were available with other lending institutions. I think those were the words.

A Yes.

Q And you said no?

A Right.

Q And by comparable, you meant these were somewhat lower interest rates?

A A greater percentage of the appraised value I suppose. I really don't know where Spiegel delivers the gas. But I don't think they do not carry the BP sign. That's my understanding of the facts.

Q So this was very attractive?

A Very.

THE COURT. What's the difference between branded and unbranded gas? Do you charge a little extra if the BP sign is on the station?

A287

A190

Q All right.

Now, did you include in your answer, or did you mean to include in your answer pending inducement all the other oil companies, the major, the major oil companies --

A I said -- no, I didn't mean to, I didn't say other oil companies, because if we were doing business with BP we were loyal Sinclair/BP people, they are the ones we went to.

Q This has nothing to do with whom you went to, it is a question of whether comparable loans were available.

MR. D'AMIA: My question dealt with lending institutions, if you want to ask him about other oil companies, go ahead.

MR. MARTINEZ: I want to clarify the answer.

A Go ahead, I spoke about lending institutions, being banks --

Q It is a fact, isn't it, that during the period you were referring to, all the other major oil companies offered comparable financial arrangements?

A Other oil companies had varying types of financing, but basically, I believe that to encourage -- distributors, most major oil companies had some method of assisting them in their gross.

A And it was comparable to the mortgage arrangements same deal that was unprofitable to BP and he couldn't get it and the energy crisis caught up with him. I think probably that's what happened. But I am specu-

A299

A191

with BP, wasn't it?

A I really can't answer to that.

Q Well, you can't, but didn't you in fact go around and solicit the other oil companies, and then come to BP, in effect, and tell them, I can get, you know, this deal, Amoco or a deal at Exxon, or words to that effect and -- A At what point in time are you talking about? Q I am talking about your basic method of operation in obtaining these mortgages from BP during, say, the 1950's and 1960's.

MR. D'AURIA: Your Honor, these questions go beyond the direct.

THE COURT: Notmuch beyond, you went into it a lot.

MR. D'AURIA: They were in fact, not testified to.

THE WITNESS: Excuse me, let me answer that.

A Our contract with BP and Sinclair stipulated that they were going to provide us with marketing loans -- contractually to continue to supply unbranded to Economy.

THE COURT: Did you go to other people?

THE WITNESS: I didn't, we didn't go to other people.

BY MR. HARTZELL:

Q Nobody in your company did that?

In fact, the anti-trust facts are no different at all in one case than another. There may be a few labels put on them in this revised pleading, but I mean every single incident, I think, is exactly identical. I

A290

A192

A Not to my knowledge.

Q Mr. Murray Spiegel is your father?

A Yes.

Q He didn't do it?

A As far as I know, we were Sinclair jobbers and we had an agreement with Sinclair that they were going to provide us with marketing loans on those stations which they approved for the sale of Sinclair, and then -- gasoline. When they did agree to it, that they would supply the gasoline, if we were purchasing it, we had an understanding which was reduced to writing, that they were going to give us the mortgages. The only time we were ever involved in looking to any other people for mortgages, is if for some reason or other, we were going to be involved with a station that was not going to be a Sinclair and then BP.

Q Then in that case, you would have been involved with another oil company and in a similar type of arrangement?

A If we wanted it to be a station selling the brand of another company. Now --

Q I think that is it.

THE COURT: All right.

MR. HARTZELL: I did not want to cut him off.

THE COURT: No, but I think he has answered the one more year.

Then there were some other matters to be worked out. That was done, and your Honor is familiar with this settlement letter of July 11, '73.

THE COURT: Yes.

A241

question.

He need not go beyond that.

MR. HARTZELL: All right.

Q Now, inconnection with these -- you were questioned -- you were questioned a little bit about the so-called statements of British Petroleum Limited, and so forth, and you signed up with them?

A Right.

Q And that it would go on indefinitely?

Now, what was the nature of the representations you claim were made?

A Mr. Robertson and other memberrof that company --

Q That was British Petroleum, Limited, correct?

A And British Petroleum London.

(Continued on next page.)

Q London?

A Because he was an officer of both corporations.

Q I am talking about the English.

A The English?

Q Yes.

A Yes, he is a Scotsman, too.

They represented to us, they convinced us that they planned to continue the same operation as Sinclair had with respect to distributors, and particularly with respect to us because they wanted us, they wanted the BP emblem in the New York market, and they had found that we were a good outfit for

A 242

them and they were very pleased with our method of operation, and that they would continue to give us marketing loans and hope that our relationship with them would be as long as and as pleasant as it was with Sinclair.

Q Now, speaking of that particular relationship, then, that had been in effect since '64, hadn't it, the particular deal we are talking about?

A Well, actually, it preceded that, '53, I believe.

Q There were other arrangements prior to '64?

A It was the same arrangement under a different corporate name.

Q A different entity?

A A different entity, but this is a successor.

Q Your company had split up in '64, hadn't it?

A That is correct.

Q So the relationship of '64 on, was different in the sense that you were different?

A A different name, correct.

Q Well, it was more than that, wasn't it, weren't there different principals involved in the arrangement?

A There were half of the principals in our company, half of the principals would be of the original company, and half in another company.

Q In other words, in '64, a half had left?

Now, just a couple of more points, then I will sit down, your Honor, and I appreciate your intention:

it is important to realize that the July, '73, settlement arrangement for the agreed-upon additional supply of gasoline was not a continuation of that old contract at all. The old contract, as I mentioned,

A243

A Five years?

Q Well, you see we considered the fact that it predated that because without the assurance that Sinclair was going to continue the relationship with the split group we never would have split. That was one of the conditions for the split up. So our relationship with Sinclair goes back a good number of years, and they recognize that by awarding us certificates showing length of service.

THE COURT: I don't need a great deal on this. I am not sure how much difference there is between this and a bank giving you a demand note and saying we will renew it every 30 days. It is a note like Mr. Spiegel now has where he at some risk agreed. Well, you may continue.

BY MR. HARTZELL:

Q You had a five-year relationship with this particular entity which had been split up before, you signed up till '70 and then from '70 to '73, and it was extended one Jersey action pending the agreement to settle, and that agreement has release language in it, as to all these antitrust issues, and that is all pending in New Jersey before Judge Whipple.

Your Honor, we have thought this over carefully and want to say to your Honor, after reviewing

A294

A196

more year --

MR. D'AURIA: This is just a distortion of their relationship, as Mr. Spiegel has explained, their relationship has existed since 1947.

MR. HARTZELL: Well, I didn't say --

THE COURT: Let us see if we can continue with the cases, and particularly, this Semmes case, that Mr. Spiegel.

I handed up to your Honor, that we had planned but

(Continued on next page.)

we did not want to do it, in view of today's hearing until we had explained the situation to your Honor, that is, to move in New Jersey to the effect that the orders that were agreed to there be put into effect, and, your Honor, we did feel -- well, we haven't told Judge Whipple about this yet, but we plan to do that on Monday, and asked the Jersey court, and this is what I wanted to get clear to your Honor before we do it, and to stay them from proceeding in this court.

Now we have been reluctant to do that without saying it before your Honor.

THE COURT: That is all right.

MR. HARTZELL: Your Honor, the Semmes case seems to be what the Second Circuit suggests, because that case was very similar, there another dealer had started a Jersey action first, then started a New York action, and on this point, the Second Circuit reversed the Southern District for refusing to stay the New York action, saying that the Jersey action should proceed, and that the defendant could have gone there, and if it had, the Court should have and would have been obliged to stop them in

Spiegel-cross

EK:jm
T5R2

BY MR. HARTZELL:

Q One final word on that:

How long did you think B.P. was promising to do business with you, forever?

A Yes, just about.

Q On the other hand, you said that in 1970, which was some months after Mr. Robertson had made the statements and so forth, in 1970 you were free, I think you testified, to walk away from the relationship?

A In '69 and '70, both.

Q Yes, and in '73, too?

A Yes.

Q So it is your testimony that B.P. was required to go on almost forever, but that the distributor, Spiegel, was free to leave at any point, at any point at the end of the three years?

A If we didn't make a definite statement about leaving, it automatically renewed, we didn't have to take any action to keep it going.

Q Well, is it not your testimony, is it, that the 1970 contract automatically renewed in '73?

A Yes, it certainly is.

THE COURT: It will speak for itself.

What more have you, Mr. Hartzell?

MR. HARTZELL: Yes, it will speak for itself.

Q In terms of B.P. and the New York market, you mentioned they had a small percentage, I think Judge Judd asked you about their penetration, what percentage did B.P. have in the New York area?

A I wouldn't know.

Q Would you say it was less than one per cent?

A As of today?

Q Yes.

A It could very well be.

Q As of last year --

A As of last year --

Q Had it ever been much more than that?

A Yes.

Q When?

A I believe that they had three and a half, four per cent of the market.

Q When, at their peak?

A I think they ran three and a half, four per cent for a while, I don't know about peaks. That was out understanding, and they were looking to increase it and they encouraged us to get more business. They were --

MR. HARTZELL: OK, nothing else.

THE COURT: Anything more?

MR. D'AURIA: Yes, I would like a few questions on redirect.

REDIRECT EXAMINATION

BY MR. D'AURIA:

Q When you testified as to your net worth, were you contemplating the going value of the business?

A That is a going business with properties of what we considered the appraised prices or what appraisals we had--

THE COURT: You have answered the question, don't go beyond it.

Q And you testified on cross examination that over the last year you have been attempting and have in fact been successful in the selling of your gas stations?

A Yes.

Q Well, was this to raise money, why had you embarked on these sales, was it to raise money?

A Well, after trying to satisfy some of these debts, our debts had become in the nature of that which was never contemplated they should become, we were indebted on a short term basis to the Peninsula Bank, which had never been a situation we wanted, and we have had this threat of foreclosure over our heads.

Q Were it not for that, Mr. Spiegel, would you be selling the properties that you have sold this year?

A No, the getting of gas stations has been a very difficult thing because of the permit problem, most communities will not permit new gas stations to be built and the permit values have been -- well, we have paid as much as fifteen thousand dollars in expenses just to get a permit to construct a station on a piece of vacant land.

MR. D'AURIA: I have no further questions of Mr. Spiegel.

THE COURT: All right, step down, Mr. Spiegel.

(The witness was excused.)

THE COURT: Do you want to put anybody else on?

MR. D'AURIA: I would like to put two things on the record first and then ask for a few minute recess, if I may, if your Honor pleases.

THE COURT: All right.

Now I would like to quit at about 5:30, if we can, but I would like to give Mr. Hartzell a chance to get some of his witnesses on in that time.

MR. D'AURIA: OK.

If your Honor pleases, I have one witness further whom I had intended to call, but given the lateness of the hour, I would like to make an offer of proof as to what the witness will testify to and see whether or not your Honor is interested in that kind of testimony.

I would call Mr. George Clarkson who was the Regional Manager of both Sinclair and B.P. Mr. Clarkson was most directly connected with M. Spiegel and Sons during the years involved, and not only with Sinclair, but most importantly he was there at the time that B.P. took over, and he would testify that he had direct conversations with Mr. Murray Spiegel and with George Spiegel in an effort to induce them to sign up on-board with B.P., and that as part of this inducement Mr. Clarkson, on behalf of B.P., represented to the Spiegels that the relationship with B.P. would be a long and continuing one and was not to be considered to be limited by the term of the distributorship agreement.

Now, Mr. Clarkson not only made these representations on behalf of B.P. to the Spiegels, but the truth of the matter is, Judge, and he would so testify, he believed them because in 1970, after the distributorship agreement was signed, Mr. Clarkson left B.P.'s employ and is now employed by M. Spiegel and Sons;

And I think he would further testify, if your Honor pleases, that he would not have gone with M. Spiegel and Sons if he had known what would occur because he had other offers, that is if he had the vaguest idea that at the end of the next three years B.P. would cut off the oil.

He would testify that it had been the full intention, it had been B.P.'s intention, and he had so represented to the Spiegels, that they should stay aboard on B.P. and that they should continue to become indebted to B.P. and continue to be indebted to landlords and be indebted to B.P. and that the relationship would last beyond the three years.

Your Honor, we think that this is key testimony and I am prepared to offer it and --

THE COURT: Well, I don't think your case depends on proving that the three year agreement is an indefinite agreement.

I will take it as an offer of proof.

I don't think it is decisive here.

I don't know whether Mr. Hartzell has any comment on that.

MR. D'AURIA: I would like to tell you why I offer that proof, and I think it has great bearing on our claims under the common law, Judge, under our claims that B.P. ought to be estopped from terminating the agreement and from assuming that the agreement gives them that right.

THE COURT: I think your basic claim is under the Federal Emergency Petroleum Act.

MR. D'AURIA: We agree, Judge, but we have claims

going beyond the Emergency Petroleum Allocation Act.

THE COURT: You will have a chance on that at the trial.

MR. D'AURIA: That is exactly right.

THE COURT: I'm not going to accept that at this point.

MR. D'AURIA: We will prove that.

That is the offer of proof which I have made and I would introduce as my next and final exhibit, if your Honor would take them, the proceedings before the Town of Oyster Bay.

(continued on next page)

FLewis
T6R1
follows

WL:RM
T6R1-1

MR. HARTZELL: Well, your Honor, on that point I would object to that. I think that it's trying to vary written agreement. I don't know when Clarkson left B.P. at the moment.

MR. D'AURIA: October, 1970.

MR. HARTZELL: I do know that he must have -- well, I don't know, I don't know where they got that confidential document they put with their original papers here, analyzing the so-called profitability of the various Metro distributors, but it was a document dated '69, and I think if we are going to take anything from Mr. Clarkson I'd like to have him on the stand for cross-examination.

THE COURT: Well, I take this as really cumulative on Mr. Spiegel's statement that he had been promised that the distributorship would continue.

MR. D'AURIA: Precisely.

THE COURT: I'm not going to listen to it on a preliminary injunction motion.

MR. D'AURIA: Thank you, your Honor.

THE COURT: What's your final --

MR. D'AURIA: I would like to offer the proceedings before the town of Oyster Bay and the town -- again the town of Oyster Bay wherein B.P. has made application to transform existing B.P. gas stations which were owned

by independent dealers, whose dealerships they cancelled, to Gas and Go stations, which are self-service gas stations that don't have any mechanics or any of the related kinds of services that we are accustomed to having, to rebut Mr. Hartzell's statement in his opening that B.P. is shy of gasoline.

MR. HARTZELL: Is what?

MR. D'AURIA: Is shy of gasoline.

MR. HARTZELL: I didn't say that.

THE COURT: He didn't say that. He said that they have a very small percentage of their own crude.

MR. HARTZELL: They don't have any.

MR. D'AURIA: That's true --

MR. HARTZELL: Sohio even has only thirteen percent.

MR. D'AURIA: And I would direct your Honor's attention to the transcripts of the hearing wherein Mr. Timmons from B.P. in response to the questions from the councilmen as to where they were going to get gas, Mr. Timmons explained in the transcript that --

MR. HARTZELL: I object to this. I don't even know what this is or who Mr. Timmons is.

MR. D'AURIA: Mr. Timmons, Mr. Hartzell, is an official of B.P. who testified before the Town of Oyster Bay in support of an application --

MR. HARTZELL: When was this?

MR. D'AURIA: (Continuing) -- in May of -- May 28, 1974, just two months ago.

MR. HARTZELL: Well, that's completely irrelevant to this matter.

MR. D'AURIA: No, if your Honor please, because Mr. --

THE COURT: I think it's relevant, and if it's by a B.P. official it's admissible.

MR. HARTZELL: Well, your Honor, no one is denying -- although I'm not familiar with the details -- some application being made in Oyster Bay for Gas and Go stations. I mean it's not even a disputed point.

MR. D'AURIA: Well, it was denied --

THE COURT: It has a bearing on whether this is part of a policy of B.P. of getting out of the gasoline business in the metropolitan area.

MR. HARTZELL: Which is not relevant itself, but -- to this point, your Honor. And I would like to comment on that, if I may, because I think that issue got a little out of focus, in my opinion, when we first appeared here.

The assertion was made -- and your Honor asked me, and I wasn't in a position to answer -- that last year in New Jersey lies and misstatements were made

about B.P.'s Gas and Go intentions. Now, we have -- I have read the transcripts since then of the Jersey case, and I don't believe that that's correct at all. And the Ferguson affidavit lists the pages, and we are most happy to submit these to you.

That's a completely -- in my opinion -- incorrect issue. I say it's a -- it amounts to a misstatement as to what was done in Jersey.

The testimony in this case was essentially that the witnesses testified they didn't know what the decisions were going to be on the studies that were being made for Gas and Go. That's all.

MR. D'AURIA: Oh, Mr. Hartzell, I really think that you are minimizing the effect of that. If you read Judge Whipple's --

THE COURT: No, I'm going to receive it because I think it has a bearing on the necessity of closing up these stations.

MR. D'AURIA: Thank you, Judge. I have an entire--

MR. HARTZELL: Your Honor, we are not closingup any stations, remember.

THE COURT: Well, you are getting yourself out of the duty to supply gasoline --

MR. HARTZELL: No.

THE COURT: (Continuing) -- by foreclosing the

stations.

MR. HARTZELL: No, we would still have to supply the gasoline.

THE COURT: Only if they are bought by somebody who will --

MR. HARTZELL: Even if they are not bought by dealers we'd supply it to the dealer.

MR. D'AURIA: I'm going to offer two separate folders certified by the town official.

THE CLERK: Marked Plaintiff's 6 and 7 for identification.

MR. HARTZELL: Your Honor, can I presume and just say one more sentence on that?

THE COURT: Yes, surely.

MR. HARTZELL: If Spiegel only had one station now, tomorrow, he would still get the same amount of gas from B.P. under the Federal Energy Office.

THE COURT: I thought you said --

MR. HARTZELL: No.

THE COURT: (Continuing) -- that if somebody else took over a Spiegel station he was entitled to the gas that Spiegel was going to get.

MR. HARTZELL: That dealer is entitled to the gas at that location, that's true.

THE COURT: Yes.

MR. HARTZELL: But Spiegel gets the gas anyhow. So we are not cutting off any gas by any of this, no matter what happens. That's the only point.

THE COURT: Well, I'll have to study these regulations. They are somewhat complex.

MR. D'AURIA: They are, Judge, and the testimony here from B.P. makes --

MR. HARTZELL: That's an important point.

MR. D'AURIA: The testimony in these proceedings on zoning variances makes clear that B.P.'s plan is to get rid of its flags on Long Island, which flags are owned by independents, and in some instances used to be serviced by people like Mr. Spiegel, because they want to get rid of the middle men and retail guy who owns the gas station and have company-managed gasoline stations.

THE COURT: If they sell gas cheaper it might well be in the public interest.

MR. D'AURIA: It might be in the public interest in that regard, but Congress has already spoken of the fact that it's good to have these independents because they are the only people that keep the oil companies honest.

MR. HARTZELL: I'm sure B.P. will comply with the law. This is not the time to categorize this as an

illegal act. It's quite erroneous.

THE COURT: I don't think it's an illegal act.

MR. D'AURIA: No, it's part of the anti-trust aspect of our case, if your Honor please, that Judge Whipple found. You see, if your Honor please, that B.P.'s refusal to deal with us was a naked refusal to deal unaccompanied by any anti-competitive effects, and there was testimony before Judge Whipple that B.P. didn't want to compete with Spiegel.

THE COURT: I think you are on the merits of the anti-trust claim.

MR. D'AURIA: I just want to show you your Honor that there are some merits to that claim, and with the introduction of those documents, if your Honor please, we rest on this preliminary injunction application.

THE COURT: What's the exhibit number?

MR. D'AURIA: 6 and 7, if your Honor please.

THE COURT: All right, what do you want to put in, Mr.Hartzell?

MR. HARTZELL: I thought I should call Mr. Arnwine, whose affidavit is before your Honor, for just a few --

THE COURT: All right, he can swear to his affidavit again, and Mr. D'Auria can cross-examine him on the affidavit, if you want, and you can supplement the affidavit if you want.

MR. HARTZELL: I just had a couple of --

THE COURT: Yes.

R I C H A R D A R N W I N E, called as a witness, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARTZELL:

Q Mr. Arnwine, were you present during the hearings in the New Jersey action?

A Yes I was.

Q And were you present at a conference in Judge Whipple's chambers on June 28, 1973?

A Yes I was.

Q And were you present in Atlanta, Georgia, on July 11, 1973, when the agreement of that date was signed by Mr. Richard Spiegel?

A Yes.

Q Now, Mr. Arnwine, would you just in a sentence tell the Court what your position is with B.P.?

A I am the manager of District Sales or the Sales Manager for B.P.

Q Your territory covers all B.P.'s marketing areas?

A Yes sir.

Q And that includes New York area?

A Yes it does.

Q And you are familiar with the Spiegel arrangements that were made last year?

A Yes.

Q Now would you briefly relate to the Court the meeting with Mr. Richard Spiegel of July 11, 1973 as best you can recall it in connection with the signing of the letter?

A We had met on the 28th of June, as has been mentioned here earlier, in Judge Whipple's chambers in Newark, and on the morning of the 11th Richard Spiegel and I both went to Atlanta -- at the time I was living in the metropolitan area --

Q You travelled down with him?

A Yes we did. And went to our office in Atlanta, whereby we spent the better part of the day, from like 10:30 in the morning until, as I recall, 3:00 or 3:30 in the afternoon, discussing the arrangements that were agreed upon.

Q Now, when you say the arrangements that had been agreed upon, when had that agreement been made?

A Most of these had been made in Judge Whipple's chambers, relating to the gallonage, the 18,000,000 gallons per year, what would happen on the -- loans, and also on the interest rates.

Q And that was a verbal discussion in Judge Whipple's chambers?

A Yes it was.

Q Was there any indication when that meeting in Judge Whipple's chambers concluded as to whether a settlement had been reached or not reached on these points?

A There were some details still to be worked out, but I think both parties felt they would be worked out.

Q Do you recall anything Judge Whipple said on the subject of whether a settlement had been made or not made?

A Well, when we left there that day I recall we all shook hands, and I think Judge Whipple's closing comment was "I don't think any of you want to be back here. and I think this is the last time I'll be seeing you back here."

I concluded that we had a tentative agreement.

Q Now, at the meeting on July 11, 1973 did Mr. Spiegel say that in signing the letter he was coerced or under pressure, or the letter was unlawful?

MR. D'AURIA: Your Honor, I object to the leading question.

THE COURT: Overruled.

THE WITNESS: No he did not.

Q Did he indicate that in any way?

A No he did not.

Q Now with respect to these mortgage loans that are made available, do you know whether or not in fact -- take

the 1960's generally speaking -- all the major oil companies made such loans available?

A I'm not certain whether all of them did or not, but they were a marketing tool that was used by many oil companies during the early and mid-'60's.

Q And did you --

MR. HERTZELL: Okay, that's all I have, your Honor.

CROSS-EXAMINATION

BY MR. D'AURIA:

Q Mr. Arnwine, on June 28, you all were in Judge Whipple's chambers? You shook hands on what you thought was a tentative deal, is that right?

A That's correct.

Q Did you instruct your counsel to remove the case from Judge Whipple's determination?

A I don't recall whether we did that day or not.

Q But you did think you had a deal and you shook hands on it?

A I thought we had a tentative deal that needed some details worked out.

(Continued on next page.)

12

Arnwine-cross

Q Tell me, Mr. Arnwine, why then did you cut the gass off on July 1?

A Because the contract was up on June 30th.

Q I thought you had a deal to sell the gas, you made a deal in the Judge's chambers?

A We had not finished the details.

Q What were those details?

A Well, as I recall they related to the equipment, and I'm not certain what else right at this time.

Q But there was sufficient details to not have -- to have B.P. not deliver gas for eleven days, is that right?

A We felt that was correct.

Q And at no time during that eleven days, Mr. Arnwine, did you ever instruct your counsel to withdraw the case from Judge Whipple's consideration, did you?

A Not to my knowledge.

Q Did you know, sir, that Judge Whipple was working on his opinion?

A Yes, we did.

Q Well, why would Judge Whipple be working on an opinion, sir, if the case had been tentatively settled and you shook hands in his chambers, sir?

A We were still working with Mr.Spiegel.

Q When after June 28th, did you next talk to

Mr. Spiegel, sir?

A As I recall there were several conversations between some of our people on the telephone with both he and his counsel.

Q Did youhave any conversation, sir, after June 28th?

A I'm not certain whether I talked to him personally or someone else in our office did. But I don't believe I did.

Q And nothing in those conversations, Mr. Arnwine, got you close enough to a deal to get the gas coming until Mr. Spiegel signed up, is that it?

A That's correct.

Q Wasn't it a fact, Mr. Arnwine, that you weren't going to sell one more ounce of gas to the Spiegel's unless they dropped the lawsuit?

A That was one of the agreements in the July --

Q And wasn't that date --

THE COURT: Wait a minute.

I was wondering whether he was going to say it was in the chambers. It was in the July 11, agreement?

THE WITNESS: Well, it was in the chambers also. That was one of the things that we never discussed, to my knowledge, again.

Q And wasn't that one of the things, Mr. Arnwine, that Mr. Spiegel did not want to do was drop his lawsuits?

A He did not indicate it.

Q Was Mr. Spiegel happy on July 11th, with the agreement, Mr. Arnwine?

MR. HARTZELL: I object.

THE COURT: I'll let him answer it.

THE WITNESS: I don't know how you'd relate happy.He seemed pleased that there had been a document signed when he left that afternoon.

Q Do you think he was pleased?

A And I think he expressed that in a letter later.

Q Do you think he was pleased, Mr. Arnwine, about the document being signed, about the gas coming all over again?

A I have no idea.

Q How long have you been in the gas business, Mr. Arnwine?

A Twenty-one years.

Q Do you think from July 1, to July 11, that the Spiegel organization was under a lot of pressure?

A Well, I don't know what their other supply sources are. They admitted that they had many both last year and again today.

Q Well, do youhave any idea what percentage of their

supply B.P. was?

A Only what they've said here today and in Court last year.

Q Fifty percent, do you disagree with that figure?

A I have no reason to disagree with it.

Q Would you say, Mr. Arnwine, that an independent jobber who is going to lose fifty percent of his supply, and in fact was without it for eleven days, was under a lot of pressure, sir?

A That could create it, but I have no way of knowing that he in fact was going to lose it, that he didn't have another supplier.

Q But if he didn't have another supplier, Mr. Arnwine, would you say that the loss of fifty percent of the independent's supplier would put him under a lot of pressure?

MR. HARTZELL: I object, your Honor. I think it's argumentative.

THE COURT: Sustained. I think you have covered it.

Q Mr. Arnwine, do you know why B.P. withdrew from the New York City market --

MR. HARTZELL: I object, your Honor.

Q (Continuing) -- in 1972?

MR. HARTZELL: I didn't go into that on direct,

16

and I think it's irrelevant to a preliminary injunction issue, again.

THE COURT: Well, it's like the Gas and Co. I'll hear it a couple of minutes. Overruled.

THE WITNESS: What was the question?

Q Do you know why B.P. stopped selling gasoline to New York City in 1972?

A We did not get a variance and we did not have the low-lead gasoline available.

Q Would you say that it was because of the low-lead requirement that B.P. left New York City?

A That was one of the reasons.

Q Would you say that was the principal reason?

A That and economics.

Q Do you know a Mr. Griffin?

A Yes, I do.

Q Is he an employee of B.P.?

A Now Sohio.

Q Now Sohio. And what capacity is he employed in, sir?

A He's the vice president of marketing for Sohio.

Q In 1972, Mr. Griffin had occasion to testify before the sub-committee on activities of regulatory agencies relating to small business, and that was of the select committe

of the small business of the House of Representatives at a hearing chaired over by Congressman Adabo, and Mr. Griffin was asked this question --

MR. HARTZELL: I object, your Honor. He's reading from a non- --

THE COURT: I don't know what this has to do with questioning Mr. Arnwine.

MR. D'AURIA: Well, he's the only representative we have here of B.P., Judge, and parked away in our papers, which your Honor might consider, or certainly as to the merits of --

THE COURT: Well, unless -- I suppose that's all right unless Mr. Hartzell concedes that this is a statement made by a B.P. representative.

MR. HARTZELL: I can't concede anything, and I object. I've never seen it, I don't know what it is, I've never met Mr. Griffin.

THE COURT: All right, ask him about it.

MR. HARTZELL: And he isn't employed by B.P., he's a Sohio marketing official, I gather.

MR. D'AURIA: And Sohio controls all of B.P., does it not, Mr. Hartzell? And was not Mr. Griffin an employee of B.P. as well as an officer of B.P. in his career?

18

THE WITNESS: He was at one time.

MR. D'AURIA: Yes.

MR. HARTZELL: Well, I object, your Honor, to reading something that happened in a Congressional hearing.

THE COURT: No, I think it may have a bearing on the issues here.

Q Mr. Adabo asked Mr. Griffin, Mr. Adabo being the Congressman, "Does the new legislation" -- and that means the New York City low-lead requirement -- "concerning lead reduction in gas have anything to do with your decision?" "Your decision" was for B.P. to withdraw from the New York City market. And Mr. Griffin replied "None whatever."

Is that testimony in accord with your understanding as to why B.P. withdrew from the New York market in July 1972?

A I think definitely the advent of low-lead affects the economics.

Q Well, Mr. Griffin said the low-lead requirement had nothing to do with his decision to withdraw, it was just B.P. did not want to sell in New York City anymore.

Do youagree with Mr. Griffin's testimony?

MR. HARTZELL: I object, your Honor,

THE COURT: Sustained.

MR. D'AURIA: I have no furth r questions.

THE COURT: All right.

MR. HARTZELL: I have one question on re-direct.

THE COURT: Yes, go ahead.

RE-DIRECT EXAMINATION

BY MR. HARTZELL:

Q On this New York City question, did B.P. get a variance beyond July 1, 1972 to sell its gas in New York City?

A No we did not.

Q And as a result of not getting such a variance did it have low-lead gas to sell in New York City?

A No we did not.

Q And why did it not have such gas?

A We were not manufacturing any low-lead gasoline at our refinery at that time.

MR. HARTZELL: That's all. Thank you.

THE COURT: All right, I thought there were refineries -- I thought B.P. didn't have any refineries

MR. HARTZELL: No, No, it had I think two, two refineries.

THE COURT: Oh, it didn't have any crude?

MR. HARTZELL: No crude. I think there were two refineries, one in Texas --

THE COURT: You may step down.

MR. D'AURIA: One more question, if I may, if your Honor please.

RE-CROSS-EXAMINATION

BY MR. D'AURIA:

Q When Mr. Spiegel, Richard Spiegel, was out in Atlanta with you signing up that July, '73 thing, Mr. Arnwine, was he down there with counsel?

A No he was not.

MR. D'AURIA: Thank you.

THE COURT: All right, step down.

(Witness excused.)

MR. HARTZELL: Your Honor, may I call Mr. Ferguson, New Jersey counsel?

THE COURT: Yes.

MR. HARTZELL: He is here.

THE CLERK: Raise your right hand, please, sir.

A L F R E D L. F E R G U S O N, called as a witness, having been first duly sworn, was examined and testified as follows:

THE COURT: All right, be seated, please.

DIRECT EXAMINATION

BY MR. HARTZELL:

Q Now, Mr. Ferguson, would you please tell the Court your occupation and affiliation?

A I'm an attorney at law in the State of New Jersey, I have been since 1965. I'm a member of the firm of McCarter and English, 550 Broad Street, Newark, New Jersey.

And we were counsel and still are counsel to B.P. il, Inc. in the action pending before Judge Whipple in the United States District Court for the District of New Jersey.

Q Mr. Ferguson, were you present in chambers, Judge Whipple's chambers, June 28, 1973?

A I was.

Q And would you tell the Court the substance of your recollection of the events of that time?

A I was called down to Judge Whipple's chambers to be present with Mr. Hoy, an attorney for -- and house counsel for B.P. Oil, and with Mr. Arnwine during the settlement negotiations requested by Judge Whipple. The reason I was called was was that my partner, who was an actual charge of the litigation, Eugene M. Herring, had been ordered to trial before the Honorable Max Mailer in the Superior Court Chancery division in Essex County and Mr. Herring asked me to go down in his place.

I participated marginally in the settlement discussions in Judge Whipple's chambers. The discussions were conducted largely between the principals with Judge Whipple's

assistance.

The Spiegel representatives, including Mr. Spiegel who testified here today, I believe, were for the most part in Judge Whipple's chambers, and the B.P. Oil representatives, including Mr. Arnwine and Mr. Hoy and myself, were largely outside in the anteroom where the secretary was.

An agreement in principal was reached, and my recollection is that we all were in Judge Whipple's chambers, with the Spiegel representatives on the south -- on the north side of his office and with the B.P. representatives, including myself, on the north side of his office. We commented on the agreement in principal, which was basically a one-year supply of gasoline -- I believe it was 18,000,000 gallons -- a one year extension of the mortgage, the mortgage and the mortgage notes which were the subject of the litigation, and immediate payment of approximately -- or payment as soon as possible of $400,000, which Spiegel was going to arrange through other financing -- and there was talk at that time by Spiegel of the Peninsular Bank -- and certain other details.

There were -- there was some discussion about rack price and delivery price, and there was discussion over the alternative means of delivery of the gasoline from British Petroleum to Spiegel, because B.P. had been delivering the gas in their trucks, and the problem was to obtain alternate

transaportation for the gas to be picked up by Spiegel under the new agreement, which in effect was for one year from that date.

Q At the conclusion of that meeting was there any conversation that a settlement had been reached, or what was the nature of the conversation as to the situation?

A My recollection is that there was no specific decision made as to what papers were to be filed settling the litigation or dismissing the litigation, that the parties were to tie up the loose ends and communicate among themselves and through counsel to tie up those loose ends.

Q Now, subsequently was a stipulation of discontinuance with prejudice signed by counsel for the parties?

A Yes sir it was.

Q And you have a copy of the affidavit that you signed today in this matter, Mr. Ferguson?

A Yes I do.

Q And is Exhibit A to that affidavit a copy of the stipulation of settlement and dismissal?

A Yes sir it is.

Q Now, has that stipulation of settlement and dismissal been filed in New Jersey?

A No sir it has not.

Q And what was the -- Why not?

24

A On July 18, 1973 Mr. Robert S. Moraff of the firm of Marcus, Rosen, Breslow, Levy, Fisher and Gustin, the attorneys for plaintiffs in the New Jersey action, wrote us -- wrote Mr. Herring of my firm a letter in which he stated "It is my understanding that the stipulation of settlement and dismissal shall be signed by yourself and promptly filed with the Court." He then went on: "Please call me with regard to the general release and to the sufficiency of the form, and I shall have it promptly executed."

We replied on July 26, 1973, to Mr. Moraff in a letter signed by Mr. Herring, in which Mr. Herring stated "I have signed the stipulation of dismissal which you sent. A copy of the signed stipulation is enclosed. I shall hold the original in escrow until we receive the executed release from you, and then I shall file it and send you a conformed copy when it has been filed."

The -- after that letter of July 26, there were extensive communications between counsel as to the form of the general release, because the settlement agreement of July 11, 1973 excepted from the general release stated in paragraph 6 certain matters of accounting for products sold and delivered by and between plaintiff and defendant, and related I believe to credit card purchases and similar items.

(Continued on next page.)

MM
T7-R1-1

Ferguson-direct

Q These were a number of miscellaneous outstanding matters?

A There were miscellaneous outstanding matters which both parties intended to except from the terms of the general release stated and contemplated by paragraph six of the July 11, '73 settlement agreement.

THE COURT: Excuse me just a minute.

(Pause.)

Q Briefly could you tell the Court what happened after that, bringing us up to June, 1974, with respect to the question of filings and the pendancy of the Jersey action?

A A form of general release or modified language to be inserted in the general release was forwarded by Mr. Moraff to Mr. Herring in a letter dated December 29, 1973, a copy of which is attached to my affidavit as Exhibit B.

About that time --

THE COURT: Wait a minute.

B as in Boy, yes. Go ahead.

A At about that time counsel in New Jersey, at least our firm, was not actively involved in ironing out the details between plaintiffs and defendant, particularly with respect to the purchase of certain marketing equipment which was covered also by the July 11, 1973, agreement.

MR. D'AURIA: I object to this testimony your

Honor because the witness is not privy to the details of it.

THE COURT: He can give us a general story.

Q I just want the general update.

A It was my understanding that the parties communicated between themselves as to how this was to be done, how the appraiser was to be selected and this equipment was to be inventoried, appraised and paid for.

Q Was that carried out properly?

A No sir, it was not.

June 6, 1974, we filed with the Court and served upon Mr. Moraff a petition and order to show cause returnable on June 24, 1974, why judgement should issue in favor of B.P. Oil and against the plaintiffs in the sum of $230,000, representing the value of the equipment as per the appraisal to be sold to plaintiffs pursuant to the July 11, 1973, agreement.

Q Was that application to Judge Whipple made in the pending New Jersey action?

A It was.

Q What was the nature of that, how did it fit in the Jersey action?

A The petition recited the events leading up to -- it recited, number one, the July 11, 1973 agreement. It recited that the parties both had had problems agreeing on the

procedure and the values. It recited the defendant's position that the plaintiffs were not living up to the terms of the July 11, 1973, agreement and it asked that, in effect, specific enforcement of thatJuly 11, 1973, agreement be given.

Q Was a hearing ever held on that application?

A No sir.

Q Why not?

A The parties compromised their differences, and I believe the plaintiffs paid approximately $135,000, $137,000 to B.P. and the petition and order to show cause -- the order to show cause was withdrawn by our firm and a hearing was never held before Judge Whipple. The matter was adjusted between the parties.

Q Is the New Jersey action still pending?

A It is, sir.

MR. D'AURIA: I object to that your Honor. I think that's a determination for your Honor to make. It's pending only because they haven't filed a stipulation.

THE COURT: Was a stipulation of discontinuance filed?

THE WITNESS: It has not because of our statement to hold it in escrow untilthe general release had been

signed by the plaintiffs and delivered to our firm.

MR. D'AURIA: From and after July 11, 1973 --

I thought you had finished. I am sorry.

Q You recall, turning back for just a final moment to that June 28th, meeting in chambers with Judge Whipple, whether Mr. Arnwine or Mr. Hoy, the B.P. representatives you have told us were present, had any contacts by telephone in connection with settlement terms with any of B.P. officials.

A I believe they may very well have. I can't recall who they called. I do believe they might have called down to either Wilmington or Atlanta, but I cannot be sure.

MR. HARTZELL: I do thank you.

THE COURT: Any cross-examination.

MR. D'AURIA: Yes.

CROSS-EXAMINATION

BY MR. D'AURIA:

Q Mr. Ferguson, from and after July 11, 1973, were any depositions taken in the case in New Jersey?

MR. HARTZELL: I object your Honor. That doesn't make any difference.

THE COURT: Overruled.

A No sir. I do have --

Q Thank you sir.

Were any motions made before June, 1974, between

July, '73 and June, '74, any motions in that case at all?

A I don't believe so. But I have a certified copy of the docket entries.

Q I just would like your recollection.

A My recollection is there were none.

The accurate record is the certified copy of the docket entries.

Q So far as your office was concerned Mr. Ferguson after July 11, 1973, was the case over?

MR. HARTZELL: I object your Honor.

THE COURT: Sustained.

A No sir.

THE COURT: I will take the answer.

Q Mr. Ferguson, was theonly ongoing matter after July 11, 1973, whether or not Spiegel would sign a general release?

A The ongoing matter was whether we would receive from Spiegel a general release pursuant to paragraph six. --

Q Isn't it a fact --

A -- of the July 11, 1973, letter --

Q Isn't it a fact --

THE COURT: Wait a minute.

A -- and the subsequent filing of the stipulation of dismissal and the settlement agreement which incorporates

30

by reference the July 11, 1973, agreement.

MR. D'AURIA: He 's becoming argumentative with me. That's summarizing all of this other testimony.

Q Isn't it a fact Mr. Ferguson that Spiegel refused to sign a general release?

A No sir. I believe that the language -- Mr. Moraff, attorney for Spiegel, prepared a form of general release and then in his letter to Mr. Herring of our firm, dated December 29, 1973, Exhibit B in my affidavit, he underlined the language which made modifications to the previous form which he believed were acceptable to him.

Q I would like you to refer, if you are looking at Mr. Moraff's letter of December 29, 1973, to after the underlined and parenthesized portion, there was going to be excepted from the release offered by Mr. Moraff on behalf of Spiegel any claims arising out of B.P.'s pull out from New York city. Wasn't Mr. Moraff submitting to B.P. a release which reserved to Spiegel the right to institute suit about B.P.'s pull out of New York city and isn't that why Mr. Moraff suggested release language was found not acceptable by B.P.?

MR. HARTZELL: I object.

A I am not sure I understand your question.

THE COURT: I am not sure I interpret it that way.

A If I do understand your question correctly, I

interpret this as specifically including in the matters to be released any claims of an authorized nature or for breach of contract authorized in connection with B.P.'s pull out from New York City in July of 1972.

THE COURT: When was the release signed?

THE WITNESS: The release, to my knowledge, was not received by our office. It may have been signed, but we do not have it. I don't know what --

Q That is the only reason you have not filed the stipulation of this continuance?

THE COURT: It's a good reason, isn't it?

MR. D'AURIA: I don't know Judge.

A We have letters in the files saying we will hold it in escrow until we receive it. We have not received it and we, according to that letter, without some kind of Court sanction, as far as I am concerned will not file it.

Q It is your testimony that Spiegel never signed a release satisfactory to you or to B.P. or you have never received it?

A As far as my file shows, we have not received a general release pursuant to paragraph six from Spiegel to be filed.

Q That is the only reason --

A Not to be filed. To be received by us after the

receipt of which we would then file the stipulation of dismissal.

Q That is the only reason why the action is still maintained?

A No.

MR. HARTZELL: I object.

MR. D'AURIA: Frankly, Judge, I don't understand--

THE COURT: I have a lot of actions where nothing has been done for a year and they are still open until I take some action to throw them out.

MR. D'AURIA: Exactly. All right, Judge.

Q Mr. Ferguson, on June 28th, if you say an agreement was struck; is that your testimony?

A I don't believe so. I believe an agreement in principal was reached between the parties, the general terms of which were outlined at the meeting.

Q Do you remember what details were left open for discussion?

A No I really don't. There were many conversations, some of which I was a party to, many of which I was not a party to.

Q In relation to that portion of the agreement which was struck in principal, according to you, how complex were those issues about which an agreement was reached as

compared to those details concerning which an agreement had not been reached.

MR. HARTZELL: I object your Honor.

THE COURT: Overruled.

A I wasn't aware of all the details which were not agreed upon and, therefore, I have no basis to make a comparison.

Q A sufficient agreement had not been reached, had it, Mr. Ferguson, for you to withdraw the case from Judge Whipple's consideration, had it not?

A No.

Q A sufficient agreement had not been reached, had it, Mr. Ferguson, for you to suggest to B.P. that it continue to sell gas pursuant to the agreement in principal.

MR. HARTZELL: I object your Honor.

A I don't think I understand what that question means.

Q If an agreement in principal was reached, as you testified it was, right, Mr. Ferguson --

A An agreement in principal as I outlined.

Q And one of the aspects of that agreement that had been reached in principal related to the delivery of gas for the ensuing year, did it not?

A For a one-year period, yes.

34

Ferguson-cross

Q Was that one-year period to commence on July 1, 1973?

A That was one of the problems, because we did not tell Judge Whipple that the case was settled and stop working on your opinion or stop further consideration.

Q That wasn't my question, Mr. Ferguson.

My question was: Was the agreement that B.P. was going to commence or continue to deliver gas from July 1, 1973 -- had that part of the agreement been reached in his chambers on June 28th?

A I really can't recall if I ever knew that part of it and I can't tell you now whether it was or not.

Q What was the agreement in principalthat was reached on June 28th, 1974, sir?

A That there would be a one-year supply of gasoline.

Q From when, sir?

A That is what I specifically cannot recall.

Q Did you know that the distributorship agreement was going to terminate on June 30th, 1973?

A Yes sir.

Q Did you know that on June 28th, the Spiegels could look forward to only two more days of gasoline?

A I believe I did, because I recall them talking about trying to get as many trucks in as possible before the

June 30th date. Now, June 28th, was on a Thursday and the 29th was a Friday and the 30th was a Saturday, and I think there were discussions as to how many trucks they could get in on the 30th so they could get gasoline to their stations that weekend.

Q The one year that was struck in principal Mr. Ferguson then had to be the year beginning July 1, 1973.

MR. HARTZELL: I object. He's arguing.

THE COURT: It's argumentative. I have heard enough on it.

Q Why did you suggest to B.P. that even though the agreement had not formalized, that it continued to deliver gas to Spiegel if an agreement in principal had been reached

MR. HARTZELL: I object your Honor.

THE COURT: Sustained.

He wasn't the partner in charge.

MR. D'AURIA: Then I move to strike his testimony, Judge.

THE COURT: No.

MR. D'AURIA: No further questions.

THE COURT: All right, anything more?

MR. HARTZELL: Can I have just a moment?

No your Honor.

THE COURT: Have you another witness you want to

36

put on?

MR. HARTZELL: No your Honor I don't have any other witnesses here.

I wanted to say that Mr. Gay, who signed the original affidavit we submitted, is on vacation in Missouri.

THE COURT: I will treat the affidavit as part of the papers and factual.

MR. HARTZELL: As for any of the Cleveland people, we just didn't think we ought to try to bring them all here today.

THE COURT: No. A temporary injunction is decided on something less than a full trial on the merits. But I think I have a real question here as to what the interpretation is of the Emergency Petroleum Allocation Act.and whether it is necessary to accompany the delivery of gas with a continued extension of credit.

MR. HARTZELL: Of debt.

Well, only gas, as I said. We did put in, your Honor, through Mr. Arnwine's affidavit, the Energy Office directives requiring continuation of gas supply. So that really is not an issue and I don't think that any injunction on that point is proper under these circumstances, no showing of imminent cut-off or anything

like imminent cut-off.

With respect to the debt, I agree with your Honor that the debt question involves an interpretation of what was the agreement made last year in Jersey as it may be affected by the later energy regulations because I think it is our position --

THE COURT: Suppose there wasn't any agreement in Jersey. Suppose the mortgages just came due, giving effect to the Jersey agreement that the mortgages are due on June 1, or June 30th.

MR. HARTZELL: All right, June 30th, '74. Giving effect to that proposition, the supply of gas is not necessarily related to that fact.

THE COURT: That's an arguable point.

MR. HARTZELL: Yes it is. But I think the facts that are developed on that are , number one, that Spiegel would continue to get the gas, as I mentioned, even if he was down to one station. Number two, if he sold any of these mortgaged stations to dealers or if they were sold on foreclosure, those very locations, as long as they continued to operate, will get this supply. Three, that I think the evidence shows that he could carry the additional cost and pay these things off and they wouldn't be foreclosed and, four, they only represent a portion of the stations, and he told us they are the better

38

stations actually which would be the easiest to sell, and while we tried to make an arrangement on this, he has brought this suit. I am not authorized to make anything like that. I don't think --

THE COURT: I'm sure the inability to sell is tied in not just with mortgage terms. It seems to be tied in also with the supply of gasoline, the permanency of the --

MR. HARTZELL: I didn't follow what you meant.

THE COURT: Well, if he could refinance the mortgages by just paying an extra few thousand dollars a month, there might not be any irreparable hardship.

MR. HARTZELL: That's right.

THE COURT: But if he can't refinance in the face of your likelihood of cutting off gasoline as soon as the Emergency Petroleum Act expires.

MR. HARTZELL: Wait a second your Honor.

You are right on that , I understand your point. But let's bear in mind that the size of the equity of this company, the security that could be offered for any refinancing and so forth -- we are not talking about just Spiegel and one station. This isn't a neighborhood one-station dealer who has his business built into one station. He has plenty of alternative sources of credit here to make that financing attractive. Now,

it's true it may cost them a little more now, but that's also why B.P. wants its money, and this has been down in black and white on these documents for years, and I just don't think the energy thing quite reaches it.

THE COURT: I am not sure if it's been a really valid position in the agreements, that you can accelerate a mortgage whenever you decide to stop selling gasoline. That may be settled in the Jersey action.

MR. HARTZELL: It was mutual either way. I mean he could leave us, too. That's why the three years contract.

THE COURT: That may be a cure.

MR. HARTZELL: But the final word we have to say your Honor is that really we think that this ought to be in New Jersey because all the anti-trust issues are there at this energy thing.--

THE COURT: All the what are there?

MR. HARTZELL: All the anti-trust issues are related to the release in New Jersey and I think that the only separate issue is this Federal energy issue that's come up and it seems to me that ought to be handled at the same time. Why should we have these things split.

THE COURT: If your Jersey settlement is complete, then the anti-trust cases aren't here and it's simply a

matter of a new action under the Federal Emergency Petroleum Act.

MR. HARTZELL: Well, it's a new action, but it is based on the arrangement, the contract made last year. I mean, it requires an interpretation of that contract. It probably, I do believe, requires --

THE COURT: A contract made in Atlanta, I can determine it just as well as the Jersey Court.

MR. HARTZELL: The document was signed there, but the things that lead up to it were negotiated before Judge Whipple.

THE COURT: I would doubt if Judge Whipple wants to be a witness in such an action.

MR. HARTZELL: He should be, with due respect, your Honor -- if he is the one where all this took place, he ought to decide the scope of it and how it affects things now.

THE COURT: I suppose he might be a witness in such an action as to the interpretation of it.

MR. HARTZELL: He's the Judge in the case.

THE COURT: I should think it might be embarrasing to him. I suppose maybe his law clerk can be a witness. That's what's contemplated in a case which involves me. But again it's better to be before some other Judge.

MR. HARTZELL: Well, your Honor I don't that's

41

right for this reason. There is not a debated issue here as to exactly what was agreed on June 28th. It looks like that. All that evidence goes to is the fact that this thing was put together over there. There is no doubt that on July 11th, this thing was signed. That no one challenges that.

THE COURT: I am just puzzled by the fact that you can make a settlement and two days later you act as if there was no settlement. If you thought you had an agreement, why didn't you go on selling gas?

MR. HARTZELL: I think the thing --

THE COURT: Apparently you needed some pressure in order to --

MR. HARTZELL: We have these loose ends that had to be buttoned down in that contract, because, to tell you frankly, your Honor, the Spiegels got to take us one year at a time and at this rate we will go on dealing with them forever, but I don't think the law requires it.

THE COURT: I think I will continue the injunction until I can decide the issues that are before me and if I can do them before I go away, I will.

Do you want anything more with respect to the relation between the supplly of gas under the Federal Emergency Act and the continuance of financing?

42

MR. HARTZELL: You mean you would like a brief on that point from us?

THE COURT: I don't know. Is there anything more to say than what I will find looking at it? For the purpose of a preliminary injunction I don't have to decide it. I just decide that there is a difficult legal question.

MR. HARTZELL: I think, with your Honor's permission, could we have a week to get a short brief in on that subject and if we find a few additional things, could we add those in a brief. I don't think we will add very much.

THE COURT: Meanwhile, while it may be unnecessary to have paragraph A against terminating the sale of gasoline, you are going to do it under the Emergency Act whether you do it under this.

MR. HARTZELL: The reason we object so much to that, even though we are going to do it anyhow, is because this thing is frankly getting in the Long Island papers. There is a little publicity campaign that seems to be going on now. Mr. D'Auria even mails me, with a grin, a copy of an article the last time we were here saying "The Court grants injunction." or words to that effect.

MR. D'AURIA: On the contrary. I sent him an

43

MR. D'AURIA: On the contrary. I sent him an article with his client's name in it, counsel from Sohio, not my name. It was George Gunn, counsel for Sohio. How did his name get in the paper?

MR. HARTZELL: I think it's in very poor taste.

MR. D'AURIA: I object to my adversary making that insinuation.

THE COURT: This is a public courtroom. Sometimes newspaper reporters come in here.

MR. HARTZELL: Every time we get injoined -- we have enough of a public relations problem here being treated and claimed to be liars in New Jersey on gas and an integrated oil company matched in, when we are not integrated at all, a big oil company against a little guy, and we represent 100% of the --

MR. D'AURIA: Mr. Griffin testified before Congress that you represented 4% of the market. I don't want to talk about all these discrepancies. Sohio happens to be the 7th largest company in the country.

MR. HARTZELL: It is very important that the Court doesn't just assume that well, it isn't going to hurt you and then we'll put it in even thought it's unnecessary, because this gets in the public mind and it's hurting us.

THE COURT: There are worse things that are hurting

44

the oil companies now.

MR. HARTZELL: Not B.P. The competitive situation is bad for B.P., and I am not going to go on the public record and tell you why.

THE COURT: They are selling unbranded gasoline here. How can they be hurt?

MR. HARTZELL: Because of what it costs B.P. to get this gas when they don't have reserves. The cost is fantastic.

MR. D'AURIA: I don't understand what that has to do --

THE COURT: I'm on your other issue about the hurt to you, because if you are not selling under the B.P. flag, nothing is going to hurt you.

MR. HARTZELL: I mean these newspaper articles saying "B.P. injoined by Court." and so forth, there is no basis, your Honor, on that gasoline supply issue, then w ought not be injoined.

THE COURT: All right I'll have that in mind. A week for papers.

MR. D'AURIA: We will have an opportunity to apply to those?

THE COURT: If you get them in by Tuesday.

MR. D'AURIA: This is the first time I received any papers from Mr. Hartzell. We have covered that point

in the first point of the brief. With all due respect, if Mr. Hargzell is going to put a brief in, I ought to have a day or two to reply on it.

MR. HARTZELL: I don't have any objection on that.

THE COURT: Mr. Hartzell's brief by Friday and yours by the following Tuesday and, God willing, I'll get something out in a week.

MR. HARTZELL: I hate to hold you. One more minute.

On the answer here, we had arranged an extension because there are a lot of facts in there and it's just troublesome to get them organized,with Mr. D'Auria and then we had decided to subpoena for depositions next week a couple of the Spiegels. At that point we ran into a little disagreement from Mr. D'Auria. So our answer date is now Monday, next Monday. Under the circumstances we would like to have an extension until August 1, which I admit is a little while, but I don't see any harm.

THE COURT: It's not going to hurt you.

MR. D'AURIA: I agreed to that immediately. You are not going to take any depositions next week, are you? Because if you are, I think I am entitled to an answer to my complaint. So I can find out what the relevance of your questions is.

46

THE COURT: You are entitled also or Mr. Hartzell is entitled to time to consider whether he is going to make a motion challenging the service on Sohio.

MR. D'AURIA: Judge, I originally consented. I have never denied an attorney the opportunity to an extension of time to answer the complaint. But I don't think it's appropriate for him to extend the time to answer the complaint until August while he's going to take depositions next week. I don't see any purpose for having depositions in the present posture of the case, and as for the Spiegels now, we would be glad to meet with you, but I think, I ought to have an answer to the complaint.

THE COURT: Suppose you have depositions before thirty days without any permission.

MR. HARTZELL: Defendant can do it, I think.

THE COURT: Defendant can do it anytime.

MR. HARTZELL: He's is the only one that's barred.

MR. D'AURIA: I don't think before answer, Judge, a defendant is entitled to do that.

MR. HARTZELL: I think he is. But, in any event, we will postpone next week's depositions. I will work out some arrangement with you and we won't take the depositions before the answer.

MR. D'AURIA: Fine. That's fine. Then you can

46a

have all the time you want to answer.

MR. HARTZELL: I would like to hand up a brief which I didn't have an opportunity to hand you before.

* * *

Day

Ex. 5

ENVIRONMENTAL PROTECTION ADMINISTRATION

In the Matter of the March 27, 1972 Petition of BP Oil Corporation for a Variance from the Provisions of Sections 1403.2-13.11 (a)(2) and 1403.2-13.12(b) of the New York City Air Pollution Control Code

DECISION

This application for relief from the lead and volatility restrictions of the Air Code is based on the same grounds as the request made by petitioner on October 28, 1971. Specifically, BP seeks relief from the one gram per gallon lead restriction contained in Section 1403.2-13.11(a)(2) and the summer volatility restriction of seven Reid Vapor Pressure ("RVP") contained in Section 1403.2-13.12(b). The health problems involved are the same as those indicated in my decision concerning BP's October 28, 1971 petition except that the hydrocarbon and oxidant problems are greater during the summer period.

There was no public hearing on this application since I did not deem it necessary and no person filed written objections requiring one. A meeting was held on this application on April 27, 1972 between representatives of petitioner and representatives of the Administration. The relief requested is granted until July 1, 1972.

BP Owned Service Stations

As was the case with the October 28, 1971 request, BP has not established that it cannot comply with these sections. Nor has petitioner indicated what the specific costs of compliance with either section would be.

Petitioner asserts rather than proves that it should not have to comply because of the economcs involved. Economics which petitioner does not define or explain. Petitioner asks for patience explaining

that it is in the process of selling its service stations in New York City to a local company. The purchaser of petitoner's stations has, according to BP, already contracted to receive complying gasoline from one of petitioner's competitors. An alternative clearly open to petitioner.

Petitioner stated at the meeting that the sale would be completed by July 1, 1972.[1] As of the first of July petitioner will have supplied approximately 26 million gallons of non conforming gasoline to its New York City stations. Nine months will have passed during which petitioner has made absolutely no attempt to comply with a local law related to the public health. A temporary variance is granted to petitioner to supply gasoline to its service stations that does not conform to Section 1403.2-13.11(a)(2) and 1403.2-13.12(b) until July 1, 1972. However, petitioner is advised now that non compliance will not be permitted beyond this date and that the Department of Air Resources will conduct extensive samplings of the gasoline being distributed and sold in this City under the BP label after July 1st. Upon finding non compliance enforcement proceedings will be instituted.

Private Brand Gasoline

At the April 27th meeting petitioner requested additional relief until June 30, 1973 for gasoline it supplies to a local company for re-sale under private brand. Petitioner stated that the volume of gasoline involved here is approximately 12 million gallons. All other alternative means of complying aside, petitioner admitted

1. By letter dated May 3, 1972, BP reiterates its intentions to withdraw from this New York City market by July 1, 1972 but asks for relief until October 1, 1972 to provide for variables beyond the control of BP. This request is denied.

that it could supply conforming gasoline to this customer, as indeed it could do for its own service stations, by means of product exchange between petitioner and a competitor which refines conforming gasoline. Petitioner claims that the additional cost generated by such an exchange would be one cent per gallon or $120,000 and argues that this is prohibitive.

Since petitioner's competitors have absorbed much greater costs to supply conforming fuel petitioner's cost does not appear unreasonably high. Moreover, petitioner admitted that the potential fines involved for non compliance are greater than $120,000. Hence, I am denying this request to supply non conforming gasoline until June 30, 1973 and am granting a temporary variance until July 1, 1972. Again, petitioner is put on notice that non compliance after July 1st will result in enforcement.

Dated: May 30, 1972

JEROME KRETCHMER, Administrator

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

M. SPIEGEL & SONS OIL CORP.,

Plaintiff,

-against-

B.P. OIL CORP. and STANDARD OIL COMPANY (SOHIO),

Defendants.

74 Civ. 923 (OGJ)

AFFIDAVIT OF ANDREW C. HARTZELL, JR. IN OPPOSITION TO PRELIMINARY INJUNCTION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ANDREW C. HARTZELL, JR., being first duly sworn, deposes and says as follows:

1. I am a member of the firm of Debevoise, Plimpton, Lyons & Gates, 299 Park Avenue, New York, New York; and I am one of the attorneys who has acted for BP Oil Inc. (sued herein as B.P. Oil Corp.) in the above-named matter. This affidavit is offered in Opposition to the Motion for Preliminary Injunction, in order to bring to the Court's attention the following materials:

(a) Copies of articles discussing this litigation printed in the regular issues of Newsday dated June 21, 1974 and June 26, 1974 (attached hereto as Exhibit A).

(b) A copy of the Emergency Petroleum Allocation Act of 1973 together with a copy of pages 1 through 25 of the Report of the House Committee on Interstate and Foreign Commerce on the House version of the Act (both attached hereto as Exhibit B). The appendix to the House Report, which contains regional statistics and other data not relevant to this litigation, has been omitted.

(c) Copies of selected Regulations adopted under the Emergency Petroleum Allocation Act of 1973, including copies of all Regulations discussed in plaintiff's and defendant's Memoranda (attached hereto as Exhibit C).

(d) A list of the mortgages held by BP Oil Inc. on the properties of M. Spiegel & Sons Oil Corp., showing the location of the mortgaged properties and the principal due as of June 30, 1974 (attached hereto as Exhibit D). This data has been received from BP Oil Inc. and I believe it to be complete and correct. This document is being produced for the particular purpose of showing the principal amounts due on the mortgaged Spiegel properties.

(e) A copy of an Order to Show Cause, signed by Judge Lawrence A. Whipple, United States District Judge for the District of New Jersey, dated July 15, 1974, together with the Verified Petition submitted in support of the request for that Order (attached hereto as Exhibit E).

Andrew C. Hartzell, Jr.

Sworn to before me this
18th day of July, 1974.

Notary Public

JANE E. FORBES
NOTARY PUBLIC, State of New York
No. 41-6353925
Qualified in Queens County
Cert. filed in New York County
Term Expires March 30, 19[illegible]

Newsday
THE LONG ISLAND NEWSPAPER
15 CENTS
FRIDAY
JUNE 21, 1974

Oil Companies Sued to Halt Gas Cutoff

By George DeWan

Brooklyn—An independent Long Island gasoline distributor filed a federal suit here yesterday against Standard Oil of Ohio and its subsidiary, the BP Oil Co., in an attempt to stop the oil companies from cutting off his gasoline supplies June 30.

The distributor, M. Spiegel & Sons of 46 Atlantic Ave., Lynbrook, supplies 155 independent retail gasoline stations in the metropolitan area, primarily on Long Island and in New York City, according to papers filed here in U.S. District Court. Arguments will be heard Tuesday on a move by Spiegel to restrain BP from terminating its gasoline supply and foreclosing on the remaining $850,000 of an original $1,500,000 mortgage that Spiegel owes on some of the stations.

In an affidavit included in the court papers, Lawrence Spiegel, secretary-treasurer of the firm, said that BP is attempting to "force Spiegel and its customers out of business, by the simple expedient of refusing to sell any more gasoline." In December, 1972, BP told Spiegel, who was then selling to BP stations, that his supply would be cut off June 30, 1973. After an 11-day cutoff, Spiegel said, an agreement was reached July 11 for a one-year extension, provided Spiegel sold only to independent stations.

Spiegel's attorney, Anthony D'Auria, said yesterday that the Mandatory Petroleum Allocation Act of 1973, which followed the agreement, guarantees Spiegel a continuous supply of gasoline and is the basis for the suit. The act, which became law in November, requires oil companies to continue supplying all customers-of-record as of 1972 until the act expires in February.

"We are also claiming that the law ought to protect the little guy from these giants," D'Auria said. "They can't just with a stroke of the pen wipe out 25 years of work."

When Spiegel's supply was threatened a year ago, a BP spokesman said that the company was withdrawing from the area for economic reasons. A company spokesman could not be reached for comment last night, but PB does not appear to be pulling out of Long Island.

Less than three weeks ago BP sought permission from the North Hempstead Town Board of Zoning Appeals to demolish certain stations and erect streamlined "gas and go" stations in their place, to be operated by BP employes rather than independents.

Similar requests by BP have been made in Oyster Bay Town. One week prior to the request, Nassau County's energy coordinator, Francis Timmons, reported to the New York State Energy Office, that BP marketing changes are driving independent dealers out of business.

Ex A

A355

NEWSDAY, Wednesday, June 26, 1974

LI Gasoline Distributor Fights Cutoff by Oil Firm

Brooklyn—M. Spiegel & Sons, an independent Long Island gasoline distributor, obtained a preliminary injunction in federal court here yesterday preventing the BP Oil Co. and its parent, Standard Oil of Ohio, from cutting off gasoline supplies pending a hearing next month.

Spiegel, whose offices are at 46 Atlantic Ave., Lynbrook, filed suit Friday to block the June 30 cutoff of gasoline for the 115 off-brand stations it supplies in the metropolitan area, including the Island. The injunction also prevents BP from foreclosing on the remaining $634,000 of an original $1,500,000 in mortgages Spiegel owes on some of the stations. The order was signed by U.S. District Judge Orin Judd, who set a July 26 hearing on a permanent injunction request.

In December, 1972, BP told Spiegel, who was then selling to branded BP stations, that his supply would be cut off on June 30, 1973. After an 11-day cutoff, according Lawrence Spiegel, secretary-treasurer of the firm, an agreement was reached on a one-year extension, provided Spiegel sold only to off-brand stations and paid off the remainder of the mortgages.

"Spiegel agreed to pay all indebtedness owed to our company," BP attorney George Dunn said yesterday from his Cleveland office. "They failed to live up to that agreement."

LOAN NO.	ACCOUNT NO.
1376	0008-275402
1379	0008-277501
1381	0008-279602
1382	0008-27 301
1386	0008-281804
1388	0008-281902
1389	0008-281904
1390	0008-282003
1394	0008-283703
1757	0008-2883026
1774	0008-2883039
1781	0008-2883042
1959	0008-2922014
1760	0008-2922022
1890	0008-2941014
1899	0008-2941022
A	0008-2941020
1395	0008-2825201
1598	0008-2867037
1845	0008-2903030

Ex A

A356

H. SPIEGEL & SONS OIL CORP.
TOTAL DUE ON LOANS AS OF JULY 1, 1974

	LOCATION	JUN.30, 1974 PRINCIPAL	JUN.30, 1974 INTEREST	TOTAL DUE JULY 1, 1974
29	First Mortgage: Veterans Hwy. & Smithtown, Bohemia, N. Y.	$ 2,832.81	$ 17.71	$ 2,850.52
24	First Mortgage: St. Johns Place & Ralph Ave., Bklyn., N. Y.	12,144.47	75.90	12,220.37
20	First Mortgage: Atlantic & Grant, Bklyn., N. Y.	24,823.14	155.14	24,978.28
32	First Mortgage: Sunrise Hwy. & Maltes Ave., West Islip, N. Y.	24,104.27	150.65	24,254.92
5	First Mortgage: Myrtle Ave. & Suydam St., Bklyn., N. Y.	12,129.87	75.81	12,205.68
0	First Mortgage: Neighborhood Rd., Mastic Beach, N. Y.	25,736.54	160.85	25,897.39
6	First Mortgage: 68 Ave. & 76 St., Bklyn., N. Y.	23,395.13	146.22	23,541.35
6	First Mortgage: 235 E. 223 St., Bronx, N. Y.	22,225.68	138.91	22,364.59
0	First Mortgage: Hylan Blvd. & Sequine St., Staten Island, N. Y.	40,843.17	255.27	41,098.44
5	First Mortgage: Rt. 25A, Patchogue, N. Y.	65,063.89	406.65	65,470.54
4	First Mortgage: 18 Ave. & 76 St., Bklyn., N. Y.	29,111.73	181.95	29,293.68
2	First Mortgage: Rte. 303, Orangeburg, N. Y.	101,416.89	633.86	102,050.75
	First Mortgage: Willis & Williams, Williston Park, N. Y.	58,365.66	364.79	58,730.45
	First Mortgage: Merrick Rd. & S. Bayview, Amityville, N. Y.	50,579.69	316.12	50,895.81
	First Mortgage: Bullhead Tpke., Sag. Harbor, N. Y.	28,178.55	176.12	28,354.67
	First Morgage: State Hwy. 35, Middletown, N. J.	47,488.42	296.80	47,785.22
	First Mortgage: Montauk Hwy. & Mill Rd., West Hampton, N. Y.	31,148.43	194.68	31,343.11
3	First Mortgage: Page & Amboy, Staten Island, N. Y.	77,621.07	485.13	78,106.20
	First Mortgage: Victory Blvd. & Jewett Ave., Staten Island, N. Y.	31,287.31	195.55	31,482.86
	First Mortgage: 1320 Richmond Terrace, Staten Island, N. Y.	69,211.95	432.57	69,644.52

Ex. D

A357

M. SPEIGEL & SONS OIL CORP.
TOTAL DUE ON LOANS AS OF JULY 1, 1974

LOAN NO.	ACCOUNT NO.	LOCATION	JUN. 30, 1974 PRINCIPAL	JUN. 30, 1974 INTEREST
1385	0004-2818030	Second Mortgage: Seven (7) Locations:	$ 64,496.20	$ 403.10
		Sunrise & Carmen, Amityville Comack & Brentwood, Deer Park Conklon & Locust, Farmingdale, N. Y. Suffolk & Fulton, N. Brentwood Straight Path & Littleneck, Wyandanch Clintville & 10th, Whitestone Veterans Hwy. & Smithtown, Bohemia		
		TOTAL	$ 842,204.87	$ 5,263.78

* Totals arrived at after confirming receipt of May payments and assuming that all payments will be made in June.

Does not include loan on Dubois and Gibson, Valley Stream, N. Y. which they are to pay off on June 6.

2

TOTAL
DUE *
JULY 1, 1974
$ 64,899.30

$ 847,448.65

A358

EX.D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

M. SPIEGEL & SONS OIL CORPORATION, :

Plaintiff, :

-against- :

B.P. OIL CORP. and STANDARD OIL COMPANY (SOHIO), :

Defendants. :

- x

74 Civ. 923
(OGJ)

NEWSPAPER ARTICLES

A359

NEWSDAY, THURSDAY, MAY

BP to Prime Pump, Cut LI Repai

By Jim Smith

BP Oil Inc. wants to replace 17 of its 57 full-service gas stations on Long Island with stations where customers could get only gas and oil—not repairs, a company official said yesterday.

The firm sought permission yesterday from the North Hempstead Town Board of Zoning and Appeals to demolish BP stations in Garden City Park, Greenvale and Carle Place and erect streamlined "gas-and-go" stations in their place. The board reserved decision. On Tuesday, BP had requested similar permission from the Oyster Bay Town Board to convert stations in Hicksville and Syosset.

BP's metropolitan sales manager, James Timmons, who testified before the North Hempstead zoning board, said his firm hopes that conversion of some of the 17 stations can begin this fall.

Timmons' statement comes just one week after Nassau County's energy coordinator, Francis E. O'Connor, reported to the New York State Energy Office that BP marketing changes are driving the firm's independent dealers out of business. The company makes no money on repairs, only on sales of gas and oil, and O'Connor accused BP of using several tactics to drive the full-service operators out of business so they could be replaced with "gas-and-go" stations:

- Raising prices on regular gasoline on average of six cents over all other brands.
- Canceling credit cards held by customers.
- Requiring operators to pay cash on delivery for all gasoline.
- Issuing only short-term leases.
- Pressuring operators to stock large quantities of BP products.

A spokesman for BP, reached in Cleveland, said that BP is losing $50,000,000 a year, and "decided to do something about it by going to the 'gas-and-go' approach in key market areas." He said if BP prices are high, it is because almost all of BP's crude oil is imported from the Mideast, "which is the highest priced oil in the world right now."

The spokesman said BP had eliminated its own credit cards and now accepts only BankAmericard and Master Charge in order to save on costs. He said that requiring station operators to pay cash for deliveries was also a cost-saving measure. But he said he knew nothing of pressure to stock BP products and that short-term leases are often given to alert operators that their stations are to be converted to 'gas-and-go.'

In most cases, the spokesman said, t
manager would be given the chance to
manager of the "gas-and-go" station, but he
come a company employe and receive a c
on sales. But Jim Stack, 49, who has ma
J&J service station in Carle Place for five
the first he had heard of plans for his sta
converted was yesterday afternoon when
called him.

"I've worked for myself for 30 years,"
wouldn't go to work for them. I know mo
has won't have anything to do with it." Sta
pump prices are 68.9 cents for premium ga
for regular. "People won't touch it," he sa
the repair shop to survive."

Joseph Ferrara, 60, manager of Ferra
center in Greenvale the last five years,
been told of plans to convert his statio
go," and that he would remain as manager.

Timmons said that 19 "gas-and-go"
Philadelphia sold 23,000,000 gallons of g
roughly the same amount as 250 full-serv
tions there did the previous year. He sa
stations are open 24 hours a day, seven d
and employ from 12 to 15 persons each
about six under the old system.

A340

B.P. IS SAID TO SEEK $400-MILLION LOAN

The British Petroleum Company is negotiating to borrow $400-million from a group of New York banks, according to industry sources. B.P. declined to confirm or deny the report.

Industry sources said the money would be used to finance the company's part of the Alaska pipeline, in which B.P. has a 16 per cent interest.

Last month, the Standard Oil Company (Ohio) obtained $600-million in revolving credits from the Chase Manhattan Bank and 17 other banks here for its share of the venture. B.P. reportedly has a 25 per cent stake in Sohio.

The Alaska pipeline is expected to cost $4-billion and is engineered to move 1.2 million barrels of oil a day from northern fields to that state's southern ports.

A361

U.S. Says Sohio Delibera... duced Gasoline Supply Here Dur... ortage

By DAVID BIRD

The regional office here of the Federal Energy Administration charged yesterday that the Standard Oil Comany of Ohio had deliberately cut back gasoline supplies to this region during the depths of the shortage in favor of customers in the Middle West.

Alfred Kleinfeld, the acting regional administrator, ordered the company to cease the allocations. In a statement from the company's headquarters in Cleveland, Sohio said it would comply but intended to challenge the order.

If the charge is upheld in court, the company could be fined more than $4-million, the energy agency said.

Earlier this year, Mr. Kleinfeld's predecessor, Gerald J. Turetsky, made several charges that there had been unfair gasoline allocations to this area, but he had refused to name any companies. This is the first time that the charge had been leveled at a specific company.

So far, only Sohio has been charged with discriminatory allocations, but Alan Moss, general counsel of the Federal office here, said, "We are looking at other companies."

'A Distribution Problem'

Sohio acknowledged that it had given a lower allocation to the East.

"There was a difference in what was allocated," said Berais Butler, a Sohio public relations representative, "but it was a distribution problem. There are no pipelines that link our refineries in Ohio with the East Coast."

Sohio is the parent company of BP Oil Inc., which markets gasoline from Maine to Virginia, and of the Boron Oil Company, which serves an area from Indiana to western Pennsylvania.

Sohio consistently allocated a larger amount of gasoline to Boron than to BP.

Because of the discriminatory allocation, New York and New Jersey were shortchanged, according to the F.E.A., by 3 million gallons in February, 3.8 million gallons in March, 3.2 million gallons in April and 3.8 million gallons in May.

Asked why he thought Sohio had channeled more gasoline to the Midwest, Mr. Moss said, "I think they found it more profitable to do business there."

The order also calls for BP supplies to this area to make good the shortfall of gasoline to this area resulting from the alleged use of the double standard.

Under the regulations, "base-period" was to be a supplier equity on the basis of a percentage or fraction of the amount used in 1972, the base year, but the F.E.A. said that some customers in Region Two, which includes the Virgin Islands and Puerto Rico as well as New York and New Jersey, had not received gasoline at all.

"The allocation to certain base-period customers was planned for and included in Sohio's and BP's calculations but never actually distributed."

"In addition to supplying customers in Region Two on the basis of a separate and lower allocation fraction," Mr. Kleinfeld's order said, "some base-period customers received less gasoline than would have been even under the lower fraction and some received none at all.

Not all energy officials shared the view that there had been a shortchanging of supplies to this area.

Almeric O'Hara, director of New York State's Emergency Fuel Office, denied there had been any shortchanging.

"We have been able to get our fair share of supply," he said in response to a question at a news conference yesterday at the Women's National Republican Club, 3 West 51st Street.

A362

F.T.C. ACTS TO CUT OIL-DIRECTOR TIES

Gas Companies Also Cited in Complaints Against 7 Men and 12 Concerns

By RICHARD D. LYONS
Special to The New York Times

WASHINGTON, June 27—The Federal Trade Commission began action today to break up interlocking directorates involving a dozen oil and gas concerns, complaining that seven of their directors are on the boards of competing companies.

Corporations named in the action include the Standard Oil Company (Ohio), the Amerada Hess Corporation, the Diamond Shamrock Corporation, the El Paso Natural Gas Company, the Kerr-McGee Corporation and the Transcontinental Gas Pipe Line Corporation.

The F.T.C. announced in a statement "its intention to issue six complaints, each pairing two firms in the energy industry, alleging illegal director interlocks among competitors."

Technically, the commission issues a complaint when it "has reason to believe" that the law in this case Section 5 of the Federal Trade Commission Act and Section 8 of the Clayton Antitrust Act, have been vio-

Continued on Page 13, Colu

THE NEW YORK TIMES

F.T.C. ACTS TO CUT OIL DIRECTOR TIES

Continued From Page 1, Col. 3

lated. The Clayton Act states in part that "no person at the same time shall be a director in any two or more corporations. . . . so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws."

The companies and the individuals involved have 10 days to indicate if they will agree to a consent decree agreeable to the commission. If such a settlement is not arranged the cases probably would go to court.

The seven individuals are: Willard F. Johnston of Houston; William B. Moore Jr. of Boston; Dean A. McGee of Oklahoma City; Alfred C. Glassell Jr. of Houston; Horace A. Shepard of Cleveland; Paul A. Conley of New York, and Franz Schneider of New York.

In January the F.T.C. forced the Chrysler Corporation and the General Electric Company, which compete in the manufacture and sale of air conditioners, to remove Edmund W. Littlefield, who was a director of both companies. Mr. Littlefield is the chairman of Utah International, Inc., of San Francisco. In recent years the F.T.C. also has moved to stop interlocking directorships in the fields of non-ferrous metals and auto tires.

other cases involving interdirectorates that the has moved on in recent have involved the Armco Corporation, the Alumi- Company of America, the Inc., Cott Copper Company, the Chase Manhattan Bank and the First National Bank of Chicago.

In the present oil and gas action, one official of the Austral Oil Company of Houston who asked that his name not be disclosed, said in a telephone interview that "I figure that the best way for us to handle this is to have the director resign from one of the boards."

In this case the director involved is Mr. Johnston who also is on the board of the Dresser Corporation of Houston. Mr. Johnston could not be reached for comment.

L. A. Monroe, president of Dresser, said in a telephone interview that "my personal opinion is that Dresser is a drilling contractor which does not compete with Austral."

Six of the seven individuals named today were identified three months ago as being among 25 persons under scrutiny by either the F.T.C., the Justice Department or the Securities and Exchange Commission. These investigations were looking into potentially illegal corporate interlocks.

The seventh person, Mr. Moore, was out of the country at the time and could not be reached for comment. In a telephone interview today, Mr. Moore said he had not seen the complaint but that "it seems to me that it's up to the companies involved." In his case, Amerada Hess and the Newmont Mining Corporation, both of New York.

"If either one or both of them may want to bring litigation against the F.T.C. that's their choice," he added.

Mr. Schneider, a director of both El Paso and Transcontinental, both of Houston, said he would not take any action "until I see the complaint."

Officials of most of the

Kerr-McGee Chairman

A third director interlock challenged by the F.T.C. was that of Mr. McGee, who is chairman and a director of Kerr-McGee of Oklahoma City, and the Oklahoma Natural Gas Company of Tulsa.

"I do not consider Oklahoma Natural Gas, a [illegible] intra-state public utility, and Kerr-McGee to be competitors or that there is any impropriety in my serving as a director in both companies," Mr. McGee said in a statement.

Other companies and those other directors who could be reached by telephone declined formal comment until the draft complaints had been received in the mail.

Mr. Shepard is the chairman of TRW, Inc., and a director of the Standard Oil Company (Ohio) and the Diamond Shamrock Corporation, both of Cleveland.

Mr. Glassell is a director of El Paso and Transcontinental.

Mr. Conley is a director of the General American Oil Company of Texas, in Dallas, and Pauley Petroleum, Inc., of Los Angeles.

The F.T.C. action was praised by Representative Les Aspin, Democrat of Wisconsin, as a commendable step." But Mr. Aspin said "there are still at least 15 other individuals who I believe are illegally serving on the boards of directors of competing energy firms."

A363

Energy Firms
Facing Charges

WASHINGTON (WP) — The Federal Trade Commission is preparing to issue six complaints challenging interlocking directorates in 12 companies in the energy business, it was learned yesterday.

The firms involved include three giants — Amerada Hess Corp., El Paso Natural Gas Co. and Standard Oil of Ohio.

The FTC will charge that the firms and seven individual directors are in violation of the Clayton Act, which prohibits anyone from serving on the boards of directors of two competing corporations if either has $1 million in capital, surplus and undivided profits.

A364

RNAL, Monday, June 24, 1974

Sohio Says Special Aide Is Named to Negotiate Divestiture of Stations

By a WALL STREET JOURNAL Staff Reporter

CLEVELAND—Standard Oil Co. (Ohio) said it agreed with the Justice Department for the appointment of a special master to try to negotiate the sale and transfer of enough Sohio service stations to meet the remaining terms of a consent decree that cleared the way for Sohio and BP Oil Corp., a subsidiary, to merge in 1970.

Named special master was William M. Cafaro, chairman of Cafaro Co., a Youngstown, Ohio, real estate developer. The appointment is effective July 1, Sohio said.

The original consent decree required Sohio to dispose of retail outlets accounting for 400 million gallons of gasoline annually over a four-year period. The first phase of the divestiture was completed in 1971, when Sohio sold to Houston-based Pennzoil United Inc. 122 Sohio stations and all the assets of Fleet-Wing Corp. and three other distribution subsidiaries, which accounted for a total of about 150 million gallons annually.

Sohio blamed "changing market conditions, including the shortage of gasoline," for its inability to meet the remaining divestiture requirements. The concern said it had assured the government of its cooperation with the special master.

Volume and Open Interest

A365

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

M. SPIEGEL & SONS OIL CORPORATION,

Plaintiff,

- against -

B.P. OIL CORP. and STANDARD OIL COMPANY (OHIO),

Defendants.

74-C-923

July 26, 1974

Appearances:

COLE & DAITH, ESQS.
Attorneys for Plaintiff

By: ANTHONY J. D'AURIA, ESQ.
JOSEPH DIBENEDETTO, ESQ.
RAYMOND DRUMMER, ESQ.
of Counsel

DEBEVOISE, PLIMPTON, LYONS & GATES, ESQS.
Attorneys for Defendant B.P. Oil Corp.

By: ANDREW C. HARTZELL, JR., ESQ.
MARTIN FREDERIC EVANS, ESQ.
MARJORIE S. GROSS, ESQ.
of Counsel

J U D D, J.

MEMORANDUM AND ORDER

Plaintiff has moved for a preliminary injunction against the discontinuance by defendants of sales of gasoline

to it and against acceleration of mortgage notes and the foreclosure of mortgages held by defendant B.P. Oil Corp. (B.P.) on plaintiff's gasoline stations.

Facts

Plaintiff operates a chain of retail gas stations in the metropolitan New York area and supplies gasoline to other stations. It is characterized as an independent marketer. Plaintiff acquires properties on which to build gas stations, trains dealers, and supplies them with gasoline purchased from major oil companies. The stations owned by plaintiff are leased to various operators, normally under ten-year leases.

Until March 1969, plaintiff obtained its gasoline from Sinclair Oil Corporation which had helped finance the extension of plaintiff's chain by granting fifteen-year mortgages on the stations.

In 1969 defendant B.P. Oil Corp., then a subsidiary of British Petroleum Company, Ltd., acquired Sinclair's east coast operations. It was stressed to plaintiff by B.P. officials that their company would have a more effective sales push in the New York area than Sinclair had accomplished. The Sinclair distribution agreement, which was to expire on

June 30, 1970, was renewed by B.P. in May 1970 and extended until June 30, 1973. B.P. wrote to plaintiff's president in November 1970 that it would provide marketing loans "so as to enable distributors to expand their retail marketing chain at prime locations." At that time oil supplies were ample and there was substantial competition.

Each mortgage and note provides that the entire principal shall become due at the holder's option if plaintiff discontinues the sale of the distributor's gas or if the distribution agreement is terminated by either party for any cause.

An analysis of the operating performance of Sinclair's metropolitan New York distributors, prepared in November 1969 for B.P.'s Marketing Information Department, showed an annual after-tax cash flow of more than $461,000 from the Spiegel outlets and an estimated pay-out of all the investment in real estate and equipment in 5.6 years.

Trouble developed in 1972 when B.P. failed to obtain a variance in New York City to avoid the effect of an ordinance relating to the lead content of gasoline. Plaintiff was notified that B.P. would cease delivering B.P. gas to stations in New York City after June 30, 1972. However, B.P.

continued to supply gas to stations outside New York City. Plaintiff attempted unsuccessfully to refinance its mortgages on New York City stations and obtain alternate sources of supply.

In 1973 B.P. announced that it would not renew the plaintiff's distributor agreement which was expiring on June 30, 1973. After this announcement, an action was brought in the United States District Court for the District of New Jersey by M.S.S. Economy Oil Corporation, an affiliate of plaintiff, which sought, among other things, to enjoin the termination of the agreement and the ensuing acceleration of mortgages, and to obtain damages for anti-trust violations involved in the distributor agreement; plaintiff also joined as a party to this action. At a conference in chambers on June 28, 1973, the plaintiffs in the New Jersey action agreed with B.P. on basic terms of a settlement proposal and the B.P. representatives "shook hands" before they left. Nevertheless, B.P. terminated all deliveries of gasoline to stations of plaintiff and its affiliates at the close of business on June 30, 1973, leaving plaintiff in desperate straits, without supplies for its stations and facing threats of withholding of rent from lessees and suspension of bank credit.

On July 11, 1973 an agreement was signed at B.P.'s eastern office in Atlanta, Georgia, providing for continued supply of gasoline for another twelve months, based on an immediate payment of $400,000 on account of existing mortgage indebtedness and the extension of the balance due on the mortgages to June 30, 1974. The balance, after payment of the $400,000, was about $1,100,000. Plaintiff was not represented by counsel at the meeting, its secretary-treasurer having been sent down to get any agreement he could obtain.

Only a few stations could be refinanced at reasonable terms during the year ended June 30, 1974, with the result that plaintiff was indebted to B.P. on June 30, 1974 for about $894,000, secured by mortgages on 27 different stations.

Meanwhile, the Middle East oil embargo began in the late fall of 1973, making it practically impossible for gas station operators to find new sources of supply, or even to rely safely on their existing sources. Congress responded by enacting the Emergency Petroleum Allocation Act, described below, which was designed to assure each independent marketer of a continuing supply of gasoline equal to the amounts purchased by it during the calendar year 1972.

B.P. is dependent on others for most of its crude oil, but its retail sales manager told the Town Board of the Town of Oyster Bay on May 28, 1974:

> [T]he crude oil situation in our company has improved and today, we are at a higher allocation than we were in 1973.

Plaintiff's annual volume of about 100,000,000 gallons is obtained about 50 percent from B.P. and 50 percent from other sources.

Plaintiff obtained the $400,000 down payment for the July 11, 1973 settlement by a short term bank loan. The uncertainties of the petroleum market and the present high interest rates have interfered with its efforts to put that loan on a permanent basis or to find long term suppliers and financing arrangements for the stations still mortgaged to B.P. Plaintiff has a net worth estimated at more than $1,500,000 but has only modest liquid assets, and its existence is imperiled by B.P.'s demands for immediate payment of $894,000.

The court finds that plaintiff has made serious and substantial efforts to refinance its gas stations, without significant results. Plaintiff has been thus far unwilling to accept deals which would give a negative cash flow - those

requiring annual mortgage payments for interest, amortization and taxes greater than the lease payments on the same stations.

Even during the year after the settlement agreement, it was necessary for plaintiff to apply to the Federal Energy Office on one occasion to require B.P. to continue its lawfully specified supplies of gas.

The New Jersey action was not discontinued, because B.P. required releases of the anti-trust claims included in the New Jersey complaint and has not received them from plaintiff's counsel. The July 11, 1973 agreement called for such releases.

The complaint in this action charges that the acceleration clauses in the mortgages constitute an invalid tying agreement and that these clauses are being used in an illegal scheme for defendants to acquire plaintiff's business. The complaint asks for an injunction against the termination of sales of gasoline, and against the acceleration of the mortgage notes and the foreclosure of the mortgages. Plaintiff also asks the court to set aside the July 11, 1973 agreement on the basis of duress, and seeks substantial damages on the anti-trust claims. Of the 27 stations to which the action relates, 26 are located in New York and one in New Jersey.

The court has denied a motion to transfer this action to New Jersey and has issued a temporary injunction against the immediate foreclosure of the mortgages, pending a hearing on whether the preliminary injunction should be continued.

In the New Jersey action, Judge Whipple denied the plaintiff's motion for a preliminary injunction because of a lack of showing of probable success on the anti-trust claims in spite of a showing of hardship. His Memorandum was filed on July 11, 1973, but coincided with the settlement agreement only by happenstance.

B.P. is now a subsidiary of Standard Oil Company of Ohio, which in turn is partly owned by British Petroleum Company, Ltd. There is no evidence against Standard Oil Company of Ohio thus far in the proceedings.

Discussion

There is clearly great hardship on plaintiff if the preliminary injunction is not granted. It is pointless for B.P. to argue that payments of $14,000 a month are not serious since this argument disregards the fact that B.P. claims a right to $894,000 at once. There is only a minor hardship on B.P. in continuing to receive the agreed amounts on the

mortgages; the interest element may be less than could be earned today, depending on the amount that should be offset for other profits realized from the relationship. In any event, B.P. has not based its argument on this point.

Perhaps at some point plaintiff should be required to accept refinancing deals with a moderate negative cash flow (a forced reinvestment in the stations) as a condition of a continued mortgage moratorium. The present record does not support such a condition.

The Emergency Petroleum Allocation Act provides for a mandatory allocation of crude oil and refined petroleum products under regulations to be promulgated by the President, and specifies that the regulations shall

> . . . result in the allocation . . . to each branded independent marketer . . . in an amount not less than the amount sold or otherwise supplied to such marketer or refiner during the corresponding period of 1972.

Pub. L. No. 93-159 § 4(c)(1) (Nov. 27, 1973).

It is evident that this action is not precluded by the New Jersey action, since the Act was not approved until after the settlement, and the present issues could not have been involved there.

It would appear in any event, that if an agreement

was reached in the judge's chambers, it was repudiated by B.P. when it stopped deliveries of gas on July 1, 1973, and that the agreement of July 11, 1973 must stand on its own feet, rather than constituting a court-sponsored settlement. It is not necessary at this time to determine whether it may be rescinded for duress. Compare First National Bank v. Penner, 454 F.2d 626 (2d Cir. 1972).

The Congressional desire to protect sources of supply for independent marketers was evidenced by the Report of the House Committee on Interstate and Foreign Commerce with reference to HR 8039, one of the bills that became the Emergency Petroleum Allocation Act of 1973. The Committee stated (HR Rep. No. 93-531, 93d Cong., 1st Sess (1973), pp. 18-19):

> The Committee is especially concerned with the downstream vertical integration of the major oil companies into the distribution and retail levels of the market. Major oil companies have begun to market secondary brands through wholly-owned distribution subsidiaries. The primary brands are to an increasing extent being marketed through so-called salaried or managed retail outlets. Branded independent marketers, already under short term lease and supply agreements are finding that their agreements are not being renewed. Leases of one year's duration are being converted to thirty days.

> Representatives of branded dealers believe that this represents an attempt by the majors to force private entrepreneurs out of the retail market and to convert station operators to salaried employees.

Pursuant to the policy indicated in the Committee Report, major oil companies were forbidden to change the credit terms accorded to their customers. The regulations provide in 10 C.F.R., § 210.62(a), that

> [N]o supplier may require or impose more stringent credit terms or payment schedules on purchasers than the normal business practice of the supplier for that class of purchaser (e.g., COD purchasers) during the base period, nor may any supplier modify any other normal business practice so as to result in circumvention of any provision of this chapter.

Defendant B.P. argues that the reference to credit terms applies only to rents and not to mortgage payments. There is an area for debate on the point, but the description of the mortgages as "marketing loans" tends to support plaintiff's contention that the monthly payment schedule on the mortgages was part of the credit terms relating to distribution of gasoline. There is at least a substantial possibility for ultimate success by the plaintiff on this point.

The court will not pass at this time on plaintiff's claim of anti-trust violations. It is apparently a substan-

tial claim, for the lack of a release of anti-trust claims has held up defendants' filing of the signed discontinuances of the New Jersey action. Likewise, it is unnecessary to discuss now plaintiff's common law claim that the actions of B.P. are an unconscionable use of its dominant position and therefore should be forbidden. Shell Oil Co. v. Federal Trade Commission, 360 F.2d 470 (5th Cir. 1966); Mobil Oil Corp. v. Rubenfield, 72 Misc.2d 392, 339 N.Y.S.2d 623 (Civil Ct. Queens Co. 1972). B.P.'s efforts to develop a new system of direct distribution in Oyster Bay are also of only collateral interest at this stage of the case.

B.P.'s expressed willingness to comply with the provisions of the Emergency Petroleum Allocation Act concerning the sale of gasoline does not forestall plaintiff's right to an injunction, considering the history of the relations between plaintiff and B.P.

Both parties cited Semmes v. Ford Motor Co., 429 F.2d 1197 (2d Cir. 1970), but it is particularly persuasive in support of plaintiff's position on the right to a preliminary injunction.

Plaintiff's right to a preliminary injunction has been established within the principles set forth in Checker

Motors Corp. v. Chrysler Corp., 405 F.2d 319 (2d Cir. 1969).

It is ORDERED that the preliminary injunction heretofore issued be continued until further order of this court, as against defendant B.P. Oil Corp., but dissolved as against Standard Oil Company of Ohio; and it is further

ORDERED that the parties attend a pretrial conference in chambers at 4:30 p.m. on September 13, 1974 to consider the requirements of discovery and the setting of a trial date.

/s/ OWEN C. JUDD
U. S. D. J.

COPY RECEIVED

COLE & DEITZ
ATTORNEYS FOR

Plaintiffs - Appellees

DATE: 10/18/74